

The Age of Consent: News, crime and public debate

Claire Konkes, BA

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Abstract

In 2009 in Hobart, Australia, a 12-year-old ward of the state was advertised in a metropolitan newspaper as an 18-year-old prostitute. The decision to only prosecute one of the 100-plus men estimated to have paid for sex with the child was a scandal that made national headlines. Sustained coverage over the next two years was notable for its representation of community outrage, which included allegations of a cover up involving the highest levels of government and the judiciary. This thesis is both an examination of the news coverage of the controversy and an attempt to theoretically understand the relationship between contemporary journalistic practice, representations of crime and mediatised controversy. Using a methodology that draws on content and frame analysis of news and other texts, and interviews with journalists and their sources, this study seeks to identify the point at which socially useful news coverage of complex legal matters tips into panic (McNair 2006). This investigation examines how Tasmanian media framed the coverage of this matter; how journalist-source relationship informed the coverage; and what journalistic practices and communications strategies contributed to the sense of confusion and distrust that informed the controversy. Its key findings demonstrate the extent to which ideas of news values are both fluid and an important factor in how journalists and their sources identify opportunities for newsmaking, that news coverage and news framing is significantly dependent on the sponsorship of sources, and that these relationships, combined with the communications strategies of government, the judiciary and other actors, contributed to the apparent politicisation and outrage. The capacity of journalism to contribute to democratic deliberation at a time of radical change is currently under scrutiny. The findings of this investigation provide a nuanced observation of the extent to which the source-journalist relationship determines the quality of reporting and public debate.

Declaration of Originality

This thesis contains no material which has been accepted for a degree or diploma by the University or any other institution, except by way of background information and duly acknowledged in the thesis, and to the best of my knowledge and belief no material previously published or written by another person except where due acknowledgement is made in the text of the thesis, nor does the thesis contain any material that infringes copyright.

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Declaration of Ethical Conduct

The research associated with this thesis abides by the international and Australian codes on human and animal experimentation, the guidelines by the Australian Government's Office of the Gene Technology Regulator and the rulings of the Safety, Ethics and Institutional Biosafety Committees of the University.

Signed Date:

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1. INTRODUCTION

1.1 The crime

His fall, from honest politician to ostracised paedophile, was absolute. When the Honourable Member for Elwick, Terry Martin, appeared outside the Hobart Magistrates Court in October 2009, he was already a public figure who had served his community in local and state government for most of his working life. Only a few years earlier, Martin had put his conscience ahead of his political career and crossed the floor of the Tasmanian Parliament against his Government's 'poor governance and ethics' (Duncan 5.4.2007). This act of defiance established him as a popular independent parliamentarian and highly visible critic of the Labor Party and its incumbent premier, Paul Lennon. However, on that warm spring day in 2009, Martin fitted another stereotype: walking with his lawyer and refusing journalists' questions, he was a public figure accused of having sex with a child.

A week later, another man, Gary Devine, was arrested for pimping the 12-year-old that Martin had paid to fellate him. Devine was known to police and had a long history of violence, especially towards women.¹ In February 2010, the girl's mother was arrested for selling her daughter for sex.

In March, a week before Devine appeared in court, the Labor Government, now led by David Bartlett, promised it would put children first if it was re-elected in the

¹ Devine first went to prison in 1976, was convicted and jailed for two counts of defilement in 1984, and was imprisoned in 2008 for assaulting a pregnant woman (*Tasmania v Devine*, CoPS, Evans J, 25 March 2010).

² Paul Lennon resigned from the Tasmanian Parliament in 2008 amid 'accusations of cronyism' and

20 March 2010 election.² A few days later, Tasmanian and mainland news covered Devine's sentencing hearing.³ It was front-page news in Tasmania. Devine had pleaded guilty to charges of procuring a young person to have unlawful sexual intercourse, permitting sexual intercourse with a young person on premises, being a commercial operator of a sexual services business and receiving a fee from sexual services provided by a child. Two charges of rape were dropped (Glaetzer 23.3.2010).⁴

The Supreme Court in Hobart was told that the 12-year-old child was a ward of the state when her mother and Devine advertised her as 'Angela 18, new in town' in the adult services section of Hobart's daily newspaper the *Mercury*. For four weeks at least 100 men went to the MidCity hotel in central Hobart, and later Devine's suburban unit, to pay \$100 to have sex with the child – some paying an extra \$50 to not use a condom. The girl was being sold for sex on 10 September 2009, which was also the day that the child protection worker allocated to her case recommended that it was now safe for her state guardianship order to lapse (Mason 2010:3). The prostitution did not stop until Devine decided it was too risky to continue (Brown 11.5.2010).

Devine was sentenced to 10-years jail, with a non-parole period of eight years. In sentencing, Justice Evans said:

I have looked elsewhere for some assistance on the appropriate sentence. I have paid some regard to the sort of sentence that a conviction for instigating the multiple rape of a child would attract. Whilst lack of consent is a significant point of difference between the

² Paul Lennon resigned from the Tasmanian Parliament in 2008 amid 'accusations of cronyism' and (ABC News, 26.5.2008).

³ Pleading guilty results in there being no trial and, in such cases, the accused is either sentenced on that day, or on a separate day in which they return to court for a sentencing hearing.

⁴ Devine had initially been charged with raping the girl on 3 September 2009 and raping a woman on 9 August 2009 (Carter 2.12.2009).

crime of rape and the conduct in question, the starkness of that difference is diminished when the victim is a 12-year-old. (*Tasmania v Devine*, CoPS, Evans J, 25 March 2010)

The following day, the *Mercury* reported that Tasmania Police had launched a man-hunt for the other so-called 'clients' based on an appointment diary kept by Devine (McKay 27.3.2010).

Demands for a full inquiry into the how the crimes could have occurred continued, as did the expectation that there would be further arrests. Initially, Premier Bartlett resisted a full inquiry, arguing that an internal review had identified the systemic problems that led to the child returning to the care of her mother (Neales 6.5.2010). The girl's mother, who also pleaded guilty, appeared in court for sentencing in May and was given a 10-year custodial sentence with a non-parole period of seven years. The March 20 election had returned the Bartlett Government and in April, Lin Thorp was appointed the Minister for Children in the new cabinet (*Mercury*, 23.4.2010). The debate about an independent review continued until the Government appointed Children's Commissioner Paul Mason to lead a full and independent review of the circumstances that contributed to the child's abuse (Neales 7.5.2010). But the appointment of a Children's Minister and an independent inquiry by the state's Children's Commissioner did not dampen the politicisation of these crimes and the Opposition, the Tasmanian Liberals,⁵ continued to pressure the Government to be seen to act in relation to the crimes. Even the eventual report caused problems for the Government. Mason handed his report (Mason 2010) to the Minister for Children in the same week as her departure for an overseas study trip and holiday and the *Mercury* framed this coincidence as evidence of an 'uncaring' minister (Neales 29.7.2010).

⁵ Tasmania, like the rest of Australia, has two main parties, Tasmanian Labor and the conservative Tasmanian Liberals. The Tasmanian Greens also play a significant role in Tasmanian politics (see Lester and Hutchins 2012). However, during the study period, the Greens were in coalition with Labor and supported the Government's responses on this criminal matter.

For a few months, there was little reported about the matter.

In late September 2010, the *Saturday Mercury's* front page broke the story that the 'more than 100 men' allegedly involved in the crimes against the girl were 'unlikely to face court' because the Director of Public Prosecutions Tim Ellis was 'believed to be reluctant to charge clients of the child prostitute with the crime of under-age sex because of a lack of admissible evidence' (Neales 25.9.2010a).

The scoop spilled to page seven and detailed the reasons why the decision had been made, including the revelation that the Tasmanian *Criminal Code Act 1924 (Tas)* contained the defence to anyone charged with having sex with a person under the age of 17 to argue that they believed on reasonable grounds that the person was an adult (Neales 25.9.2010b). While all Australian jurisdictions have a mistake as to age defence for this crime, Tasmania was the only state that provided no age limit on the availability of the defence of mistake as to age.⁶

The Children's Commissioner was the first to comment on the rumours and reportedly condemned both the DPP's decision and the defence of mistake as to age provisions (Killick 26.9.2010). Adding to the growing controversy around the decision were leaked reports that three Tasmania Police officers had been linked to the list of calls to the telephone number advertised with the girl (Bester 27.9.2010). It would be days before Tasmanian Police confirmed the controversial decision not to pursue further prosecutions and, in doing so, also responded to the accusations about police involvement with the girl (Neales 29.9.2010).

It would be almost a week before the Director of Public Prosecutions, Tim Ellis, made a public statement about his decision. Appearing on Friday night ABC current affairs program *Stateline*, Ellis explained his decision to not pursue further arrests to journalist Airlie Ward (Ward 1.10.2010). Ellis told Ward his decision was based on

⁶At the time of the crimes, Tasmania's *Criminal Code* contained a number of child-specific sexual offences, such as sexual intercourse with a young person (s 124), indecent act with a young person (s 125B), and procuring sexual intercourse with a young person (s 125C).

advice that a conviction was unlikely because of: an absence of admissible evidence; the likely trauma of putting a girl through multiple trials; the defence of mistake as to age that the men could use; and the girl's unwillingness to testify. Even If arrests were made, Ellis told Ward, those accused of having sex with the girl would also be able to argue that they had reasonable grounds for mistaking the age of the child because: they replied to an advertisement in the paper advertising her as 18 years of age; they had limited conversation with her; they were generally in a darkened room; the complainant's physical appearance was of a person who looked much older than 12 years of age; and, by replying to an advertisement in the paper, they could argue that they did not expect a child to be working as a prostitute (Ward 1.10.2010). Ellis agreed with Ward that the public outrage over the defence of mistake as to age could indicate that a review of the laws might be necessary, but added that it was the state's prostitution laws that needed to be looked at because 'we've got an unregulated sex industry where this sort of thing can happen' (Ward 1.10.2010).

Notably, in this interview, Ellis did not confirm how many men were suspected of having sex with the girl and, despite a diary used by police in their investigations being mentioned when Devine was sentenced (*Tasmania v Devine*, CoPS, Evans J, 25 March 2010), he was also was unequivocal in his denial there being a 'list'. The difference between a list of suspects taken from phone records and a list of people police knew had had sex with the girl was to become lost as this scandal amplified into speculation that high-profile people were involved in these crimes and were being protected by the decision to pursue further arrests (see Neales 4.10.2010).

The Children's Commissioner's decision outspokenly criticise the resolution not to prosecute more men raised questions about how he was exercising his role as

advocate for children. As Children's Commissioner, Mason's duties⁷ included specifically advocating on behalf of individual children, in this case the 12-year-old victim, as well as advocating for the protection of children generally. These duties appeared to be at odds in this case because in calling for more arrests, Mason appeared to not be acknowledging the girl's unwillingness to appear in court. Journalists did not challenge Mason on his stance and, when his three-year term expired in October and he was not re-employed, journalists generally portrayed him as an example of how the incumbent Government silenced its critics.

The controversy around the Government's so-called failure to act continued despite two custodial sentences for Devine and the girl's mother, the independent inquiry into the state's Child Protection Services (Mason 2010), an ongoing, broader parliamentary inquiry into the state's Child Protection System and two Tasmanian Law Reform Institute⁸ reviews of the laws relating to this matter: one looking at the provisions for sexual offences against young people (Tasmanian Institute of Law Reform 2012a, 2012b) and the other on the provisions for protecting the anonymity of victims of sexual crimes (Tasmanian Institute of Law Reform 2012c, 2013).

In February 2011, the now former Children's Commissioner, Paul Mason, announced he would stand against Children's Minister Lin Thorp, in the state's Upper House elections (Neales 25.2.2011).¹¹ Mason's campaign in the seat of Rumney compounded the appearance of Thorp as a minister incapable of dealing with the controversy. Having borne the brunt of the media criticism of the Government's

⁷ The Commissioner's powers and functions are determined in section 78 of the *Children Young Persons and their Families Act 1997*.

⁸ The Tasmanian Law Reform Institute was founded in 2001 by agreement between the Tasmanian Government, the University of Tasmania and the Tasmanian Law Society. The functions of the Institute include the review of Tasmanian laws with a view to modernising, simplifying and consolidating the law, receiving proposals for review and other research projects, from government, legal and civic individuals and organisations (Tasmanian Law Reform Institute 2012).

¹¹ Tasmania has a bicameral parliamentary system and the electorates and election cycle of the Lower House (the House of Representatives) and an Upper House (the Legislative Council) is distinct. (Parliament of Tasmania 2014).

handling of this matter, her position appeared untenable (Neales 2.4.2011). Compounding the portrayal of a government and minister unwilling to respond to the crimes came the revelation, just days before the election, that the lawyers acting for the girl were unable to access the girl's files from the government departments that held them (Neales 5.5.2011). Three days later, Thorp lost her seat to the Liberal candidate Tony Mulder, with Mason coming third (Neales 9.5.2011).

In November 2011, almost two years to the day from when he was arrested, Terry Martin faced the Supreme Court in Hobart on three charges: indecent assault; sex with a young person under 17; and producing child exploitation material. The trial revealed why Martin was 'singled out' for prosecution: while the other alleged clients had told police they had only had brief contact with the girl, Martin had admitted to police that he had paid the girl to visit his home during the day where she had stayed for several hours (Dawtre, 18.11.2011a). His defence at trial was that he honestly and reasonably believed that she was at least 17. His lawyer argued that the prescribed medication he took to treat the symptoms of Parkinson's disease, for which he had been diagnosed in 2005, had caused such hyper-sexuality that the resulting 'addiction' to sex had led Martin to spend thousands of dollars on prostitutes (Dawtre 18.11.2011a). After more than six hours of deliberation, the jury was unable to reach a verdict on whether Martin was guilty of indecent assault. However, the jury returned a guilty verdict for the charges of sex with a young person under 17, and of producing child exploitation material (Dawtre 22.11.2011). A week later, Martin received a 10-month wholly suspended sentence (Dawtre 30.11.2011).¹²

In his sentencing comments, Justice David Porter found:

¹² A suspended sentence is a fixed term of imprisonment that is partly or wholly suspended. Suspended sentencing has been found to have both a deterrent and rehabilitative effect in Tasmania and elsewhere (Bartels 2008). However, the practice is subject to review in Australia because of criticisms that the practice insufficiently denounces behaviour that is publically condemned (Freiberg and Moore 2009).

The commission of the crimes is directly connected to what was effectively a mental illness, caused by medication prescribed for a serious physical condition. But for the medication, he would not have been engaging the services of sex workers and would have had no contact with the complainant. (*Tasmania v Martin*, CoPS, Porter J, 29 November 2011)

Justice Porter also found that:

Mr Martin seems to have become something of a lightning rod for community outrage, channeled through the media, at the undoubtedly outrageous situation in which the complainant was put... Mr Martin is not to be sentenced on the basis that he is a representative, appointed by the media or a part of the community, of the men who paid for sex with the complainant and have not been charged. (*Tasmania v Martin*, CoPS, Porter J, 29 November 2011)

In February 2012, Martin appeared again before the Supreme Court and pleaded guilty to charges of possessing a child pornography collection that police found when they searched his home in 2009. The collection of images included children as young as eight. His defence, in mitigation, 'mirrored that made in his earlier trial', which was that prescribed medication had caused hyper-sexual tendencies that had led to the crimes (Dawtre 9.2.2012). In his sentencing remarks, Justice Blow said the pornography found by police 'was very much a private pornography collection' and that only a small proportion of the collection was child exploitation material (*Tasmania v Martin* [2], CoPS, Blow J, 16 February 2012). Justice Blow also said that Martin 'would not have committed any crimes' if he had not taken the drugs prescribed to him by his doctor because:

A significant proportion of patients who take them experience abnormal drives that they have little power to resist, involving such things as excessive shopping, impulsive behaviour, excessive sex drive, and compulsive gambling. (*Tasmania v Martin* [2], CoPS, Blow J, 16 February 2012)

Martin received a suspended one-month sentence. After two years as a pariah awaiting trial, during which time his illness had worsened, a seriously ill Martin left the Supreme Court with his legal team. As they walked through the gardens towards his barrister's offices, two women from the girl's family attacked him. A few brief stories about the charges against the two women appeared over the following weeks, but having run this final gauntlet of journalists and angry family members, Martin was not mentioned in the news again. Instead, the newspaper followed the review of the legislation relating to sexual crimes involving young people and the subsequent passage of the bill that addressed the perceived shortcomings of the *Criminal Code*.

In late 2013, the Tasmanian Parliament enacted the *Criminal Code Amendment (Sexual Offences against Young People) Act 2013*, which makes those accused of child sexual offences unable to argue 'mistake of age' if the child is under 13 years of age.

1.2 Research problems

The case¹³ of the 12-year-old girl lies at the nexus of law, politics and media and, in particular, the question of public trust in these institutions. Media coverage was book-ended by the arrest of Terry Martin in September 2009 and his last court appearance in February 2012. Hundreds of news items represented the legal, social and governance matters that were raised as the story unfolded. Journalistic interest was not limited to the two adults who sold the child into prostitution and the identities of those who avoided prosecution, but also extended to the individuals and organisations that were responsible for her welfare. Journalists criticised the Government's response to the crimes and pursued calls to investigate the circumstances that led to the girl's abuse and the Government's treatment of the

¹³ The term 'case' is used to encapsulate what was publically known about the crimes committed against the 12-year-old, the official and unofficial responses to these crimes and the news coverage relating to these events.

Children's Commissioner, questioned the police investigation and the Director of Public Prosecution's decision to not pursue more prosecutions, and challenged the appropriateness of the state's legislation and judicial procedures.

The *Mercury* was central to this contest: its classified section had carried the advertisements for sex with the child as 'Angela, 18'. For comment, journalists drew on both official sources and actors,¹⁴ but also based their stories on leaked information and unattributed insider knowledge, opinion and rumour. Some of these reports carried scandalous accusations. Official responses were variously supported and challenged in news reporting and opinion, letters-to-the-editor and online comment, so that the debate became split between those voices accepting the official response and those demanding further transparency and accountability. The sense of impatience from those who accepted the official statements jarred with the frustration and incredulity of those who wanted further explanation. Between the two were journalists who were not only trying to make sense of events, but also agitating for further disclosure and accountability while others supported the official version of events. News organisations were criticised for being only interested in the story because it involved sex and children, for misinforming public debate, for further traumatising a victim, for being politicised and influenced by personal agendas, and for promulgating conspiracy theories.¹⁵ The perceived failings and successes of this coverage were not only a result of the practices of individual journalists and their news organisations, but also on the communications strategies

¹⁴ Sometimes the term 'political actors' (see Kolins Givan et al 2010) is used to describe those people who engage with news media about social issues. However, as Van Leuven and Slater (1991) suggest, actors can include people outside political and other public officials. While the authors opt for the term 'organisational communicators' to describe these people, the simple term 'actors' is used in this study to describe individuals who appear to inform and influence journalistic practice.

¹⁵ In his report Mason (2010:4) described the 'prurient fascination' with the case. Similarly, Ellis described the controversy to be caused by 'sensationalised misreporting and misinformation and pure exaggeration and I think wicked exaggeration from the point of view of pushing particular barrows' (Ward 1.10.2010). News organisations were also accused of conducting a media campaign against the Minister for Children (Barns 11.4.2011) and Premier Giddings claimed that 'misinformation' played a 'big part' in her downfall (Neales 10.5.2011).

of those individuals who stepped into the arena to comment on the issues that this extraordinary case raised. This mediatised¹⁷ debate was a complex and, at times, perplexing struggle for definition, visibility and legitimacy and was notable for its frequent focus on certain individuals. At the centre was the 12-year-old girl who reportedly could not identify the men, other than Martin, who had paid for sex (*Mercury*, 2.10.2010). Calls for the men who had sex with her to be brought to justice were paradoxically at odds with her wish to not be involved in the justice system. The ongoing public attention also challenged efforts to protect the child's anonymity and dignity and, in a small community such as Hobart, her identity was difficult to protect. Faceless, nameless, but subject to conjecture about whether a 12-year-old could be physically mature enough to be mistaken for adult, she was identified only by her age and the trauma she had suffered. Although the girl, her mother and her sisters were not named in coverage, these reports named, and often carried a photograph, of the notorious criminal Gary Devine who was associated with the family. In reporting on legal matters, journalism faces a paradox: it is a practice which claims to serve justice and accountability through transparency and visibility but, in such endeavors, it can appear to harm not only the justice process itself, but also those it ostensibly sought to represent and protect.

The crimes and the public debate that followed occurred in a particular context, but criticisms of the coverage also broadly reflect global concerns about news coverage of crime. Journalism in North America, Britain and other democracies is criticised for myriad problems, including: distorting public understanding of crime and the legal system (Greer 2010a); causing suffering and injustice to those involved in the legal process (Davis 2001); and leading to populist responses to crime and 'law

¹⁷ The terms 'mediatise' and 'mediate' are commonly used in media, political and cultural studies to acknowledge that mass media are a major intermediary between power and knowledge. While there are arguments for the definitional differences between both terms (see Strömbäck 2008), Couldry (2012:134) advises that 'mediatisation' is preferable because 'mediated' has other uses in the language. As such, 'mediatisation' has been selected to acknowledge the role of news and other publicity in the formation and distribution of public opinion and debate (Schoenbach and Becker 1995).

and order' politics (Garland 2002). Observing these criticisms, Brian McNair (2006:206) asks: 'how does socially useful coverage of a problematic reality such as crime become a moral panic?' Building on McNair's question, this study investigates the role of news in public debates about society, politics and the law to ask how journalists could have provided more 'socially useful' reporting of this case in Tasmania.

This study examines the representation of crime and social problems in news, the professional practices of journalists, and the factors that are external to the newsroom that influence journalistic practices. These questions are posed in relation to not only how such news coverage can contribute to moral panic but also can contribute to the harm caused to people who are placed under intense public scrutiny. The collision between journalism's broader remit of ensuring political accountability and communication strategies¹⁹ is also investigated in order to better understand how control of news coverage can influence public discussion about crime and political accountability.

These crimes did not occur in a social vacuum. Entangled in the news coverage were broader social problems not limited to Tasmania. Concerns for the sexualisation of children in media; the increasing visibility and legitimisation of sex work as an occupation requiring government, not moral, regulation; the question of whether our justice system reflects contemporary social values towards sexuality; and finally, how journalists can tackle these questions without resorting to sensationalism or moral panic are universal (Cohen 1972; Cohen and Young 1981; Goode and Ben-Yehuda 1994; Greer 2010b). This study approaches these questions by looking at how news representation of a case of commercial child sexual

¹⁹ The term 'communication strategy' is used here to describe how non-media professionals and organisations plan and organise their public profile through media, including traditional news and new media. This distinction follows Breit (2011:7) who argues that journalism and public relations are 'forms of professionalised communication practice'. The role of public relations in news practice is discussed more fully in Chapter Two.

exploitation was treated by journalists, their sources and others who sought to inform and influence news. How journalists represent and contribute to the appraisal of the professional and institutional responses to the sexual abuse and exploitation of young people is important. Recent inquiries into the abuse of children indicate that the focus is shifting to the criminality and immorality of institutional responses to sexual crimes against children. The ongoing Australian investigation into institutional abuse (Australian Royal Commission 2014) the inquiry into the Catholic Church in Ireland (Murphy et al. 2009), Operation Yewtree (Greer and McLaughlin 2012a) and two recent inquiries into child sexual exploitation in the English boroughs of Rochdale (Rochdale SCB 2012) and Rotherham (Jay 2013) are international examples of a shift in the way crime is understood. In that sense, the Tasmanian case at the centre of this study is not uncommon. Understanding the role that journalists played in informing and influencing public debate about the suitable responses to this crime can inform wider scholarship on how journalism can contribute to sensitive issues in a way that is socially useful.

In order to more fully explore the questions raised by McNair (2006) about how panics emerge, I draw on theoretical approaches to public interest and news representation about crime and research that considers some criminal events, and journalistic interest in them, as opportunities to observe and review social attitudes, legislation and policy. For instance, Martin Innes (2004:336) describes crimes that capture public attention as 'signal crimes' because they act as 'warning signals'. Similarly, Lyn Chancer (2005:5) observes that some sexual crimes can become 'vehicles for crystallising, debating, and attempting to resolve contemporary social problems'. Reflecting on the appearance of so-called 'crime waves' in the news, Martin Killias (2006) argues that social and technological change, as well as new laws, sometimes contribute to increases in crime and their appearance in the news is part of public debate about how to close the 'breaches' that allow the crimes to occur. The proliferation of photography and video depicting the sexual abuse of children

available on the Internet is an example of the kind of 'breach' that is created by changing technology and social practices. The number of offenders and the severity of their offences, both in terms of producers and consumers, are testing the capacity of legal systems around the world (Warner 2010). Journalism plays a role in contributing to awareness and public debate that can also precipitate legal and social change. Drawing upon the approaches to crime reporting as described by Chancer (2005), Innes (2004) and Killias (2006), this study investigates whether the news and public interest in the crimes against the 12-year-old girl and the Government response to them can be viewed as part of useful democratic deliberation. It asks if, and if so when, public and journalistic interest tipped towards moral panic.

1.3 Aims

Today's media scholarship is undertaken at a time of incredible change in the news landscape and an investigation into how journalists represent public debates about crime presents an opportunity to understand how journalistic practices are evolving in a changing professional environment. While this case was informed by the socio-political and socio-legal context of Tasmania, some of its features contained global themes, notably the role that media framing plays in informing and representing controversial public debates. Ultimately, the aim of this study is to better understand the tensions, and the tipping points, of news coverage that informs public deliberation, but also inflames controversy. This is a universal question for media research, but it is particularly relevant in international debates around the rights of children and young people, which can be seen in the current emphasis on institutional responses to the sexually exploitation of children in Australia, the United Kingdom and elsewhere.

Public and legal discourses around the rights of children in relation to sex with adults have shifted in the past 100 years and, in recent years, the focus has shifted away from perpetrators to consider how professional and institutional attitudes

contribute to the occurrence of abuse. This shift is present in many current inquiries into child abuse, such as the United Kingdom investigations into Jimmy Savile and others, the grooming and abuse that occurred in Rochdale and Rotherham, and the inquiries into the Irish Catholic church, which are discussed in Chapter Two. As such, and despite being a local crime story, this case is deserving of academic attention for the following reasons. It illustrates the role of sources and communications strategies in crime reporting in an era of 'attack journalism' (Greer and McLaughlin 2012b) and provides insights into the extent to which communications strategies aimed at controlling media attention, public confusion and blame can contribute to these elements in public discourses around crime. This case is also an example of how a single crime can lead directly, or at least feature in, public discussions and official inquiries about issues beyond the immediate crimes. Such a study advances understanding of the journalistic processes by which sources and perspectives are selected and privileged and the way the subsequent framing of crime can inform political decision making that can be applied beyond Australia. The choice of a single case for investigation provides an opportunity to analyse news framing, journalistic practice, and institutional approaches to not only child abuse, but also politically salient and troublesome media interest. The reasons for selecting this case is discussed further in the Research Design.

1.3.1 News representation and framing

News stories are not impartial descriptions of reality. Instead, events are selected by news organisations as 'newsworthy' and reporting emphasises some perspectives, details and voices over others. This selection and framing process is a central question for media research because this process informs a substantial part of what is known outside individual personal experience (Dahlgren 2005; Gamson and Modigliani 1989; Silverstone 2007). Further, this process of selection and amplification, which also renders some matters un-newsworthy, and thus invisible,

can distract public attention from other political matters (Entman 2004; Schlesinger and Tumber 1994). However, most framing in news, while being subjective, is also 'patterned and predictable' (Schudson 2004:34). Identifying these patterns can therefore improve our understanding of how news framing informs public debate.

This study aims to understand how Tasmanian news organisations reported this matter as not only a criminal matter but as symptomatic of wider problems, such as political integrity and the institutional practices relating to children involved in commercial sexual exploitation of children. As such, this study aims to investigate the how the story was framed by journalists and other commentators in order to understand how news content contributed to public debate and to identify the moment when coverage tipped towards moral panic.

1.3.2 Journalistic practice and news production

Conclusions cannot be drawn about news content without some understanding of the practices of production. Journalistic choices are not based on the decision of individuals, but informed by 'many interrelated, competing principles among contending sources and media professionals themselves' (Reese 2003:14). If understanding the impact of news on the formation and representation of public knowledge and opinion is important, then understanding the processes of news production is also important (Greer 2010b). This study investigates how the personal and professional attitudes to what makes a 'good story' led some journalists to report on this case as an opportunity to question the checks and balances of institutional accountability, when other journalists saw it as a complex but not controversial legal matter. Journalism is often a process of sense-making (Gamson 1992a; McNair 2013; Silverman 2006), whereby journalists seek people to answer their questions and this process informs how issues are framed in news. Journalist-source relationships are central to news practice (Davis 2009).

1.3.3 Institutional practices and news production

Understanding news content in terms of practice is more than a matter of the professional relationships between journalists and their sources. That is to say, communication is not solely influenced by relationships between individuals. There are also institutional structures, such as the policies and practices of Government departments, statutory offices and non-Government organisations, which influence how journalists can engage with their sources and select what they report. For instance, there are laws and court practices that control what information media organisations can report during criminal proceedings, which can therefore define the boundaries of journalistic practice and editorial content. In this case study, suppression orders and provisions around contempt of court, such as sub judice and scandalising the court, were part of the structural framework in which journalists had to act. In Tasmania, as in other jurisdictions, courts have the power to issue suppression orders to prohibit the publicising of details mentioned in legal proceedings, and these suppression orders are regarded as striking a balance between the principles of open justice and the rights of those involved in criminal proceedings (Chandler 1998; Kenyon 2006). Similarly, contempt of court provisions provide a court with the power to punish individuals and organisations for publishing material that interferes with the proper administration of justice, such as material that could interfere with jury deliberations (Chesterman 1997; Kenyon 2006). Finally, publications that scandalise the court are those regarded as lowering the authority of the court through criticisms of judicial officers, judicial processes and, in particular, implying that the actions of a judge or magistrate were improperly motivated (Pearson 2008).

This study aims to identify how journalists and news content were informed and influenced by the practices of the courts and legal mechanisms that limit journalistic practice. This study aims to identify what laws and other limitations prevented

journalists from reporting in a way that could have further contributed to public understanding, not confusion, about this case. Put simply, if, as Elizabeth Bird (2005:227) suggests, 'journalism is driven by the need to explain', this study asks what caused some journalists to pull over?

1.3.4 News and public outrage

News coverage of this case included the journalistic work of sense-making (Gamson 1992a; McNair 2013) and accountability (Djerf-Pierre et al. 2013). At times, however, news coverage included accusations of political interference in the justice system and the implication that some decisions reflected wider concerns about institutional integrity and transparency in Tasmania. For instance, local news discourses²⁰ at the time of the crime included cynicism and impatience with the Tasmanian Government over matters of probity and transparency, and, at times, this case appeared to be used as a test of institutional integrity in Tasmania. Journalists covering this case sought to explain and make sense of this complex and controversial legal matter and, in the process, reported claims of cover-up and other conspiracies, which were frequently met with official denial. This investigation aims to identify different practices and legal mechanisms aimed at controlling information may have contributed to the community outrage that such controls seek to minimise. This study aims to identify any features of moral panic in the news coverage of this case. This aspect of the controversy is important. News organisations, individual journalists, bloggers, and those who wrote letters-to-the-editor and online comments were criticised by authorities, as well as others, for peddling misinformation. However, the ensuing public debate was also identified as being an important factor in the political deliberation and policy decisions that

²⁰ 'Discourse' can be used to describe the particular idioms that are unique to professional groups (see Foucault 1971). However, the term can also be used more broadly to describe the ways of speaking about certain subjects (see Fairclough 1995).

informed the inquiries into the child protection system and the law reform process that flowed from the controversy.²¹

Ultimately, the aim of this study is to better understand the tensions, and the tipping points, of news coverage that inflames panic but also informs public deliberation. This study seeks to understand the extent to which news interest in this criminal matter, and the institutional responses to it, was an attempt to understand and address the problems that allowed the crimes to occur.

1.4 Scope

This study is a work of media studies scholarship that focuses on journalism's ability, and responsibility, to report crime. This case involves a number of complex issues and, for this reason, is multidisciplinary in scope. It investigates the specific question of how Tasmanian journalists used a criminal matter as an opportunity to challenge the accountability of the state's democratic institutions, but it also draws on wider questions of public interest in child sexual abuse and exploitation.

1.4.1 Journalism, accountability and institutional decision-making

The relationship between news, crime and politics is well-covered territory in media studies. However, in the quickly changing news landscape, the boundaries around which we define newsmaking are blurring. Journalism is 'the business or practice of producing and disseminating information about contemporary affairs of general public interest and importance' (Schudson 2003:11). However, the rise of public relations in Australia and elsewhere challenges the claim that journalism is the only

²¹ For instance, news coverage and public opinion were identified as being a key trigger for the Attorney General's request for a review of the defence as to 'mistake of age' laws (Tasmanian Law Reform Institute 2012b:1).

profession involved in the creation and dissemination of news (Breit 2011:8). I am interested in the impact of news on the professional decision-making of lawyers, and other actors. Journalism is often criticised for being variously irrelevant, incompetent or detrimental in matters of democratic deliberation (Beecher 2005; Castells 2009; Cottle 2005; Fenton 2011; Veil and Ojeda 2010) and frequently dismissed and downplayed among professionals in legal and political fields (Breit 2011; Freedman 2010;). A similar impasse appears in research (Djerf-Pierre et al. 2013; Howarth 2013; Tiffen 2000; Slotnick 1991).

This study investigates the role of journalism in a controversy that encompassed society, law and politics, with particular attention to the elements of news coverage that can be seen to contribute to outrage, scandal and conspiracy. Many argue these elements in mediatised public debate are increasing as the ever-changing media environment trends towards less control on what information passes as news (Castells 2009; Clarke 2007; Eldridge 1999; Thompson 2005). As such, re-establishing journalism, as separate from other forms of mediatised communication, such as blogging, in public debate is vital.

1.4.2 Journalistic interest in child sexual abuse and exploitation

These crimes involved the commercial sexual exploitation of a child. Sexual abuse of children is a contested subject within wider anxieties about the contemporary rights and vulnerability of children in societies deemed to have a pervasive and sexualised media culture. The question as to what extent are media increasingly sexualising children remains controversial in Australia and elsewhere (Faulkner 2010; Lumby and Albury 2010; Hartley 1998; McKee 2010).

I approach these questions by considering how news representation of commercial child sexual exploitation is contributing to the increasing recognition that the treatment of children is a public matter, not a private issue. How journalists represented and contributed to the reappraisal of the professional and institutional

responses to the sexual abuse and exploitation of young people is important. Recent inquiries into the abuse of children indicate that the focus is shifting to the criminality and immorality of institutional responses to sexual crimes against children, rather than just prosecuting offenders. The ongoing Australian investigation into institutional abuse (Australian Royal Commission 2014) the inquiry into the Catholic Church in Ireland (Murphy et al. 2009), Operation Yewtree (Greer and McLaughlin 2012a) and two recent inquiries into child sexual exploitation in the English boroughs of Rochdale (Rochdale SCB 2012) and Rotherham (Jay 2013), are examples of this shift.

Public debate about these issues, especially in relation to crime, is about language and definition, which is specifically a question of communication. Child sexual exploitation is a compelling subject to investigate because it challenges positivist assumptions about moral panics (Cohen 2011; Howitt 1998). The shift from secrecy to visibility, from the silence of taboo to the act of calling an action a crime, is a public act that defines an emerging problem. These shifts in social awareness and action by definition engage public organisations including news organisations. In these circumstances, journalists act not only as observers in the contest of definition, accusation, and attribution of responsibility, but, in their choice of sources and language, they make a contribution to how the public understand the issues being debated.²² This study investigates how Tasmanian journalists navigated the line between moral panic and salacious reporting as they sought to make sense of the

²² For instance, an analysis of two major Australian daily newspapers over a two-year period (Goddard et al. 2005) found that the language used for crimes involving children abused by an adult in a position of trust, such as a priest or a member of the family, differed from the language used for cases of commercial sexual exploitation of children. In these cases, terms such as 'brothels' and 'pimps' were found to portray the crime as prostitution rather than abuse, which shifted attention to those who coerce children into these situations and away from those who pay to abuse them. They concluded that this language 'effectively transmogrified the rapist into a customer' and constructed the child 'as an accomplice to his or her own sexual abuse' (2005:281–286).

circumstances that not only facilitated the organised sexual abuse of a child, but also appeared to allow a notable number of perpetrators to escape conviction.

1.4.3 A note on personal involvement

This investigation emerged from my professional association with Terry Martin, who employed me to help him to write his autobiography in 2009.

When Terry Martin was arrested, I was working from home, finalising a first draft of the autobiography that he had contracted me to help him write. After several months of interviews in 2009, I had collected the material to describe his journey from small business to state politics. We had agreed that it would be written as a story of how one man kept his integrity in the dirty world of politics. On the day I called to say there was a rough draft for him to look at, he did not answer his phone: it was turned off while Tasmania Police interviewed him about his involvement with a child sold into prostitution and the child pornography collection they had found while searching his home. Martin and I met the following week and I told him that while his case was going through the courts, I would not continue to work on the book. I left Martin's house ambivalent about the extent of his guilt: he did not deny having sex with the girl, only that he thought she was old enough to be working as a prostitute. I could not distinguish my incredulity from my general dismay that such a mistake could be made, especially by someone who seemed to act with such integrity in his professional life. Martin's explanation that the medication prescribed for his neurological illness led him to being unable to control or judge his sexual impulses further complicated his explanation. The contract was ended and I did not contact Martin throughout the period of this research.

While a relationship, even a professional one, should raise concerns regarding ethics and objectivity for researchers, my experience as a journalist enabled me to be distinguish Martin as a subject. Perhaps, if I did have a strong opinion about his guilt or innocence, I may have decided not to pursue this investigation. However, I

was ambivalent about the role Martin played in a much larger story about transparency and accountability and it was the story around Martin that was the site of my investigation. Janet Malcolm's *The Journalist and the Murderer* (1990) is a salient warning to anyone drawn to writing about those accused of crime. Perhaps too it is a reminder that researchers and journalists can come to form attachments and biases in their research and so the question of objectivity is not limited to those who research people they knew prior to their research. Throughout the course of the research for this study, this ambivalence remained and the questions it raised partly informed the curiosity that drove my research. This is perhaps a case of what Malcolm (1990:25) describes as the 'strange absence of feeling' she felt about the individuals at the centre of her research. The legal and ethical restrictions on interviewing Martin while he awaited trial, combined with my own feelings of ambivalence towards him, made it practically impossible to contact him, so I did not.

The ongoing legal matters throughout the entire study period and the trauma associated with the crime meant it was legally and ethically too difficult to approach the plaintiff, defendants or witnesses, or their families. It was possible for me to investigate how journalists can report social problems without interviewing those subject to criminal proceedings. For these reasons, I do not address the interesting and important questions relating to the injustices associated with news reporting on crime. Nor do I endeavor to investigate claims that there was any miscarriage of justice. Instead, I focus on the question of how the practices of journalists, and those they encounter in their work, inform and influence public debate about crimes that appear to highlight failings or breaches in the social, political or legal fabric of a community.

My interest in the questions that were raised as events unfolded were also informed by having worked as a professional journalist in Australia, including Tasmania, and through the lived experience of living in Hobart community when the debate unfolded. As an observer, I was struck by the confusion expressed in

public reaction. From a former journalist's perspective, I was curious to understand the dynamics behind the coverage because it appeared that the news agenda was being set by both news organisations and their sources. I was also curious about the way the story became not only intensely political and but also focused on a few individuals. As a member of the Hobart public, the level of outrage and confusion about the case intrigued me and led me to question those who claimed journalists were contributing towards a moral panic and to wonder what other factors may have been at work.

1.4.4 A note on referencing

Due to the relatively short study period, the limited number of journalists and the high number of texts cited, the author-date system was not adequately clear when citing news items. This study uses author, day-month-year in the in-text citations of news items for the purposes of clarity, to clearly distinguish news items from scholarly work and to assist readers with the chronology of events. This approach is similar to that used by Jenny Kitzinger (2002) who observed the necessity to list the full date for the news items. News items using this system are listed under Appendix 1. Other media items, such as websites, media releases and blogs, are cited in-text using the name-year system and can be found in the References.

1.5 Structure

This study began with an account of the crime and its aftermath, followed by an explanation of the research problems it presents, and the aims and scope of investigation. The rest of the chapters are as follows:

2. Public debate and news explores journalism's role in society, taking into account the idea of the public sphere, but also other key concepts such as 'the public interest' and 'public opinion'. This discussion establishes a theoretical framework

centred on public debate and the role of news and other media public debates. It concludes with a discussion on what might be described as socially useful news.

3. Children and news briefly reviews the literature regarding the ambiguous transition between child and adult as a location of social anxiety. It looks at recent examples of institutional and news interest in paedophilia, especially commercial child sexual exploitation, and discusses the role journalism can play in raising awareness of the problem of child sexual exploitation.

4. Crime and news begins by looking at the sociology of law and the distinction between law and morality. It discusses the practices of journalists in covering crime, including the courts and police, and the representation of sexual crimes in the news. It concludes with some reflection on contemporary challenges of news reporting on justice processes and, especially, sexual crimes.

5. Research design explains the mixed-method chosen for this study, which includes frame analysis of news texts, semi-structured interviews and the use of publicly available documents and semi-structured interviews. These approaches and their application in this research are described.

6. Setting the scene contextualises the social and political situation in Tasmania at the time of the crimes. This discussion includes looking at established narratives about the political and institutional corruption in Tasmania as well as the state's controversial sex industry laws.

7. Finding news: Media and social problems is the first of the analysis chapters. Using content and frame analysis, this chapter identifies four key phases in the *Mercury's* coverage and maps how the newspaper framed the various events, announcements, crimes and reports as symbolic of certain 'problems'.

8. Making news: Journalists and the law considers the legal and ethical challenges of reporting on crime, investigates the factors that contributed to how events were represented and examines how news informed political decision-making and the law reform process.

9. Losing control: Conspiracy, panics and outrage discusses how the use of rumour and opinion in reporting, and the organisational communication strategies of sources, contributed to the sense of outrage and conspiracy associated with this case.

10. Socially Useful News about Serious Crimes presents a discussion on the key findings from the study, the implications of these findings and their contribution to research, before concluding with a discussion on how journalism can report on issues that are not only shocking and distressing, but are also important opportunities to re-examine society and its institutions.

2. PUBLIC DEBATE AND NEWS

2.1 Introduction

A child was advertised as an adult sex worker in a metropolitan newspaper for four weeks and no action was taken to stop the abuse. She was sold in a central business district hotel, and later a private home, but only one of the estimated 100 men who paid to have sex with her were arrested and charged. Only the pimp and the girl's mother were jailed. News coverage about this case was controversial. Journalists, and public interest more generally, were criticised for primarily being interested in this story of child neglect because of its lurid details and allowing news coverage to be hijacked to serve political agendas. Those calling for more arrests were accused of ignoring the harm to the traumatised victim and her family by perpetuating news coverage. On the other hand, sustained news coverage appeared to have contributed to aspects of the political decision-making about this case. These criticisms raises the question of how news could cover this crime in a way that served the public interest without causing further suffering? This question locates this investigation within the theoretical framework of the public sphere and the role of journalism in the formation of public debate.

To establish this framework, this chapter seeks a nuanced understanding of what is meant by the terms 'public' and 'public interest' before discussing some of the theoretical approaches to journalism, public debate and democratic deliberation. It discusses the function of news in the visibility of social problems and the subsequent contests over definitions and meanings and the legitimacy of speakers. While these topics have long histories in scholarship, the current transformation of the media landscape ensures their reappraisal is as relevant as ever for contemporary scholarship.

2.2 Who are 'the public'?

The 'public' can appear self-evident, even intuitively sensed (Alexander 2006; Lippmann 1927), however the term is more than a label to describe the individuals who constitute a society. It describes a political force existing outside formal political institutions which, along with the recognition of the importance of a public space for citizens to come together to deliberate on matters of society and state, has been acknowledged as far back as ancient Greece (Curran 2000; Eriksen 2005; McDonald 1943). Civic planning to include public spaces was included in the design and architecture of medieval Europe, in the Renaissance cities of Italy, France and Greece, and in the town halls of seventeenth century England (Bridge and Watson 2002; Eriksen 2007; Sennett 1977; Weber 1978). However, the definition and ideal of any 'public' is challenged when different interests within society compete in the public arena and it is this competition that is central to understanding the role that journalism plays in public debate and democratic deliberation.

Central to scholarship on the ideal of the public is German philosopher Jürgen Habermas (1964, 1989, 1997, 1998, 2008). Habermas used the German concept of *Öffentlichkeit*, literally meaning 'openness' but translated into English as 'the public sphere', in 1989 to describe the social conditions whereby individuals can publicly discuss matters of society and governance. Habermas (1997:105) described his ideal location for public discussion as occurring 'in every conversation in which private persons come together to form a public', where individuals can be informed about matters of politics and society and can discuss these matters without threat of reprisal or coercion. He likened this ideal location to the salons of eighteenth century Europe and credits the newspapers of the Enlightenment with helping to form public identities by informing society on public matters. Habermas (1997:102–3) also distinguishes public opinion from mere opinion: the former developed through a process of educated debate, the latter he likens to 'a kind of sediment of history'. However, Habermas's (1997) reflections on mass media in contemporary society

regarded modern society as split into 'the masses' and 'the educated', with an increasingly commoditised, competitive and fractured mass media catering for both. He argues (1997:107) that this fracturing of the public sphere and mass media has reduced the efficacy of public opinion to inform political decision-making, which has subsequently seen political deliberation becoming less about consensus and more of 'compromises between conflicting private interests'. Habermas's concept of the public sphere has come to encapsulate ideas of a democratic political culture, or deliberative democracy, where the public is free of state interference to deliberate (Benhabib 1996; Charney 1998; Cohen 1996; Eriksen and Weigård 2003; Ettema 2007; Kim et al. 1999).

The Habermasian public sphere continues to work as a 'useful metaphor' for the role of the public in politics and decision-making (McKee 2005:10). However, the metaphor, and the ideal that it represents, requires nuance in order to tease out the function of journalism within democratic systems and the limitations of the metaphor. His ideal of consensus politics is challenged by the question of whether the public can be regarded as a singular entity (Schlesinger 2000).²³ The amorphous nature of the public in any society can result in problems arising when seeking consensus. In this sense, the American writer Walter Lippmann (1922; 1927) dismissed the democratic ideal of a singular public engaged in its own governance as 'the phantom public' where society 'is not visible to anybody or intelligible continuously and as a whole' (1927:32). Lippmann (1927) argued against the idealised notion that every person wants, deserves or should even be expected to participate in civic matters and dismissed the authority of public opinion. Instead, and without engaging with questions of power and hegemony, he favoured leaving those equipped to address the issues with 'the least possible interference from

²³ The idea of there being a public is possibly better described in the plural of publics (see Van Leuven and Slater 1991). However, the public can be used in the singular and the diversity within society can remain implicit in the term.

ignorant and meddlesome outsiders' (1927:188). This position was challenged by John Dewey (1927) who, in reply to Lippmann, defended the ability of everyday people to identify, if not solve, their problems. Far from seeing the public as ignorant and meddlesome, Dewey reasoned:

The man who wears the shoe knows best that it pinches and where it pinches, even if the expert shoemaker is the best judge of how the trouble is to be remedied. (Dewey 1927:207)

This exchange, known as the Lippmann-Dewey debate, strikes at the heart of any debate about public involvement, including news coverage and public consultation processes, in complex matters of policy and law. At its centre is not only the question of expertise, but also symbolic expressions of authority, and therefore, power. Dewey does not challenge the role of experts – in his case he gives the shoemaker credit for being the best judge of a remedy. His point is that while experts are essential, the lived experiences of others in society are also important in matters of political deliberation. However, the definition of experts and laypeople is one of several binaries that unhelpful define and divide understandings of public engagement.

Another binary within the idea of a public sphere is that, as a geometric term, it describes a boundary between those within the sphere and those on the outside. In modern democratic societies, power and decision-making is decentralised and, thus, defining power is not as simple as defining who is elite or on the 'inside' (Ferree et al. 2002). While the phrase 'public sphere' does not require an existent location, the coffee house and town hall meetings implicit in Habermas's idealisation are almost anachronistic. Today, public debate and deliberation is mostly undertaken in diverse media forums such as talkback radio, the editorial pages in newspapers and in social media. This shift from real to virtual locations of deliberation has led John Hartley (1996) to suggest that the public sphere may now be a 'mediasphere'. However, relabeling the public in terms of how it communicates, rather than the individuals

who constitute it, does not address the question of who constitutes the public and for what purpose.

Another problem with the metaphor is that it is rooted in the binary of 'public' and 'private' which, in itself, is a boundary-building exercise that insists on the separation of two concepts in order to function (Gitlin 1998; Steinberger 1999). Defining the boundary of the 'public' leaves questions about what constitutes the non-public, which can be understood in terms of either personal or commercial privacy (Arendt 1958; Fraser 1990; Steinberger 1999). More specific to this study is the question of the cultural blurring of the public/private binary with the dichotomy of masculine/feminine (Armstrong and Squires 2002; Firestone 1970; Lazar 2009; Lumby 1999). This binary serves to limit the public to a dominant masculine space and relegates to the private matters deemed feminine. Feminism over the past century has seen the erosion of the exclusivity of the masculine perspective in public life and the dissolution of the private/public binary (Cohen 2011; Dahlgren 2005; Duschinsky 2010; Fraser 1990; Kitzinger 2001; Lazar 2009; McNair 2006; Wykes 2001). Feminist campaigns to take private, domestic matters into the public sphere have led to some of the most politically heated debates in recent decades, including the rising awareness of the prevalence of child sexual abuse (Kitzinger 2001; Travers 2009), which is the subject of this investigation. These reappraisals of what is deemed to be in the public interest frequently redefines what should be known and what should remain private (Horwitz 1982) and any transition from private to public knowledge requires intermediaries and journalism is central to this process (Davis 2009).

The expansion of the public sphere to include perspectives deemed to be feminine or once private has been associated with the 'dumbing down' of public deliberation and media content (Barnett 1998; Habermas 1989). For instance, news content that includes reports on science, such as medicine and health, and entertainment is deemed to be 'soft news' that detracts from so-called serious subjects that are found in 'hard news' (Plasser 2005). However, the boundaries

between hard and soft are conjectural (Bell 1991). For instance, discussions about the so-called health of the public sphere should not degenerate into arguments about taste at the expense of public participation in politics and matters of governance (Goode and McKee 2013). The inadequacies of the idea of the public as existing in a sphere described here leads this review of the literature on publics to now investigate other ways of approaching the idea of the public.

German philosopher Hannah Arendt (1956, 1958, 1960, 1973) contributed to an idea of a diverse, non-binary imagining of society and the idea of the public a decade before Habermas wrote about *Öffentlichkeit* and the public sphere. Arendt (1958:183) described society as a 'web of human relationships' made out of the interconnectedness of action and speech, in multiple contexts, that were 'overlaid...overgrown...intangible'. Arendt differs most to Habermas over questions of consensus. While Habermas (1964) argues for an ideal of publics achieving consensus through deliberation and argues against returning to a sense of multiple or fragmented publics, Arendt (1958, 1973) warns of the risk of totalitarianism in any idealisation of public consensus (see Canovan 1983). Since Arendt envisioned society as interconnected, others have engaged with the idea of communication between individuals and their social spaces as being more web-like than contained in any boundary. In particular, the work of French philosopher Pierre Bourdieu (1969, 1986, 1991, 2004) introduces the useful concept of 'fields' to describe the interconnectedness between the organisations and professional bodies that make up society. Bourdieu's field theory is useful in terms of considering how the individuals within organisations maintain their personal legitimacy and as well as the legitimacy of the organisations in a changing world. Bourdieu (1991) describes the ways institutions maintain and display power without using the physical and economic force as 'symbolic power', a term now widely used to describe the modes of power in contemporary mediatised culture (see Cottle 2006b). For instance, Bourdieu (1986, 1991) argues that the prefix 'public', as in public opinion or public art, denotes an

exclusion from areas of specialisation and power which is necessary for individuals and organisations to maintain their power in society. In this sense, Bourdieu's work complements the work of French philosopher Michel Foucault (1971) who suggested that discourses, that is the ways of speaking that are unique to certain professions, can also be seen as boundary building exercise that contributes to symbolic power. For instance, Bourdieu (1986:817) argues that the cost and expertise required to access legal resources serves as 'a social division between lay people and professionals' that benefits those within the profession.

The preference to define the public as networks of individuals, organisation and information, rather than a model of mass assembly, is associated with the Spanish sociologist, Manuel Castell and his idea of the network society (1999, 2000a, 2000b, 2007, 2009). Castells defines society as a set of nodes of varying importance that are interconnected, and thus in interaction, with other nodes in the network. These nodes or 'communicative structures', are continually introduced into the network, or removed, according to their communicative usefulness. This idea of a 'network society' lends itself particularly well to modern democracies and the communication technologies and practices within them. Like Bourdieu, Castells (2009:239) argues that power is not centralised in any one sphere or institution, but is 'distributed throughout the entire realm of human action' so that power can be defined as 'the structural capacity of a social actor to impose its will over other social actor(s)'. Importantly, the networks of communication, which Castells (1999; 2000b) describes as a 'space of flows', are where power is exercised and contested. Within this perpetual flow of information and symbolism, individuals, institutions and informal groups can negotiate an ever-unstable consensus. For Castells, this communication process is always fundamentally framed by the logic of media. Finally, American sociologist Jeffrey Alexander (2001, 2006) is another weary of ideals of social unanimity. He notes that the twentieth century saw a radical move away from ideals of consensus, which ultimately devolved into the totalitarian mess of the communist

states, and instead sought social frameworks based on finding accords amongst difference. Common to the interconnected frameworks of Arendt, Bourdieu and Castells is a sense of a shared aim of producing a more civil society. Alexander (2006:69–70) also is aware of the symbolic in such a society, noting that civil society is an ‘historically unusual’ social relationship that is ‘articulated symbolically’ and whose members ‘act not only within a cultural environment, but within an institutional one’ which is ‘continuously restructuring and being restructured by them in turn’.

This overview of the idea of the public is relevant to this study because it identifies the role of mediatised contest in public debate and re-imagines such debates as being as much about legitimacy and power as the issues around which they occur. Habermas’s public sphere was discussed in terms of the usefulness of the metaphor to encapsulate a group that is visible and active in civic life without being directly employed and the Lippmann-Dewey debate was revisited to provide a perspective on the ongoing tension between claims of expertise and lived experience. Having discussed and selected a theoretical approach to public debate, it is now appropriate to focus on the role of journalism in public debate.

2.3 Journalism and the public

‘The media’ today is a conglomerate of major global industries, taking in the numerous enterprises that produce film, television and radio, books and newspapers, music and online content. The term ‘media’ describes not only the technology that delivers these formats, but also the final product and the occupations involved in the manufacture and promotion of media. How mass media engages, informs and influences the way in which people understand themselves, their community and the world around them has long preoccupied social sciences, but it was not until the past fifty years that researchers began investigating the role of news media as an intermediary between publics and power (Couldry 2012). News

organisations were soon found to be not just intermediaries, but actively involved in shaping public debate (Callaghan and Schnell 2001). Understanding the role of journalists as both intermediaries and actors in public life is central to this investigation that asks how news and journalism can be more socially useful.

As a profession, journalism emerged alongside the printing presses that contributed to the formation of publics in the development of modern nation-states during the Enlightenment (Carey 1995; Cranfield 1978; Habermas 1997; Silverstone 2007; Thompson 1995). Contemporary journalism is many things, but the commercial and political power of news media has reached the point where it is widely regarded as both a major industry, a democratic institution in its own right and a central aspect of everyday life (Castells 2004; Cottle 2006a; Couldry 2012; Curran 2000; Kim et al. 1999; McNair 2006; Schlesinger and Tumber 1994; Schudson 2006). Newsmaking is regarded as informing 'society about itself and makes public that which would otherwise be private' (Harcup 2009:3) and provides people with 'information about every conceivable aspect of the world around them' (McNair 2005:25). Before the rise of media studies, the role of the press was largely understood as a 'public service' and an authoritative and normalising voice of society (Goode 2009; Greer 2010a; Schultz 1998). However, as previously discussed, the public is not so easily defined and, it would follow, that defining how journalism can or should serve the public is equally unclear. Adding to the complexity of this question are the radical changes to the technology, business models and practices that inform journalism and news content (Schudson 2003). For the purposes of this investigation, three key concepts in media research will be explored in order to provide the conceptual framework required to discuss how journalists and their audiences understand the value and values of news, the impact of news on individuals and society and the roles that journalists, their sources and other actors can play in the production of news.

2.3.1 *News values*

What is the enigmatic criterion used by all journalists to determine what makes a good news story? Norwegians Johan Galtung and Mari Ruge (1965) provided the first taxonomy of 'news values' and description of the unspoken criteria by which journalists assess news in their study of foreign news stories in Norwegian newspapers. These findings have since been revised. Harcup and O'Neill (2001:278–279) argue that Galtung and Ruge's values have been superseded by other values, such as 'the power elite' and 'celebrity', in British newsmaking and Ricketson (2004:9–12) argues that 'impact', 'relevance', 'proximity', 'prominence', 'timeliness', 'conflict', 'currency' and 'the unusual' determine what stories appear in Australian news. The articulation and debates about news values shows the extent to which these values are dependent on context and place, and thus fluid and contested. Changes in news values are also a site for concern about the health of journalism amid increasing resource pressures. For instance, news values are regarded as becoming less politically informed and 'softer' (Davis 2003b; Harrison 2010), defined by consumer demand (Naylor 2001), influenced by public relations determining what is newsworthy (Bennett et al. 1985; Breit 2011; Mawby 2010), and increasing simplicity over complexity (Burns and Carson 2005; Johnson and Taylor 2000).²⁴ Even if news values operate as 'relatively consistent criteria' by which news is selected (Allan 2004:63), they remain contested. News values are implicit in criticisms of how news is selected and reported, and assumptions about news values, are criticised for contributing to social problems by leading journalists to either fail to report, or exaggerate or otherwise distort when they report (Bennett et

²⁴The preference for simple, easily understood news-speak is not necessarily a feature of the post-Internet media landscape. Norman Mailer (1968:66), reporting on the protests against the Vietnam war, criticised media for failing to report on complex issues: 'If the ears of the reporters were geared to capture accurately the mediocre remarks of mediocre men, then one had to look for simple salient statements, so poetically bare, but so irreducible, that they would stick in the reporter's mind like a thorn. It was the only way to talk to a reporter...brilliance with a reporter was to be shunned. Salience, not brilliance'.

al. 1985; Couldry 2012; Lumby 1999; McNair 2006). Understanding and identifying news values is important to this study because it was the value of the events at its center as news that was, at times, most explicitly criticised. This discussion has located news values as both a valid concept for media research, but argued for news values to be appreciated as criteria subject to context and definition and thus, contest.

2.3.2 *Media effects*

Another criticism in the debates about the merit of the news coverage of the case that informs this study was the question of what impact news had on the victim, her family and others. Further, journalists and news organisations were accused of distorting public understanding of the issues and leading to a populist response by government. In order to engage with these criticisms, it is necessary to consider the conceptual frameworks the impact, or effects, of media on the wider population.

Early ideas about the so-called effects of media are sometimes referred to as 'hypodermic syringe' models, which summons an image of media 'injecting' its influence into passive consumers (Bineham 1988; Jewkes 2004; Gies 2003). However, the tools needed to empirically measure the causal relationship between media and its 'effects' were elusive. Research into media effects became overshadowed by the realisation that there is neither a homogenous elite delivering the message nor a homogenous audience to receive it (Ang 1996). Yvonne Jewkes (2004:11) sums up the criticisms of media effects as: being too crude and reductive to isolate media as contributing to a person's behavior; the impossibility of accounting for the polysemy of media texts and the range of personal life experiences of individuals that contribute to interpretation; ignoring that audiences can determine the different types of media messages and respond accordingly; and being misused in debates about the breakdown of traditional institutions. Alternatively, Jenny Kitzinger (1999) defends media effects research by arguing its critics tend to: define and evaluate

personal experience as though in a media-free zone; assume that being able to deconstruct a media message is the same as being able to ignore it; and exaggerate the polysemy of texts and the availability of differing interpretations of a single message.

Although media effects as a conceptual tool has its failings and limitations, the question of how media contribute to public deliberation remains a valid research question (Chouliaraki 2006; Couldry 2012; Dahlgren 2005; Philo 1999). Lieve Gies (2008:10) observes that media effects as a theory may be discredited, but the 'very existence of media law suggests that mass communication is considered influential enough to be subjected to a regime of legal intervention'. A similar observation could be made about the extent, and expense, of public relations in political and corporate life (And they are all potential audiences. Aeron Davis (2003a, 2007) argues media effects research still puts mass media as central to notions of power over the masses, without considering how educated, media-savvy and politically aware individuals engage with, and are influenced by, the news. Davis (2007) also suggests that more work needs to be done to understand how media's representation of issues, and the effect of journalists functioning as political actors within this sphere, influence the understanding and behaviour of politicians.

The question of the extent to which news affects people is therefore both an important question, but one that is difficult to determine. It is therefore necessary in studies such as this one to acknowledge the methodological difficulties in determining the extent of media influence without acting as though it does not occur. The methodological difficulty is also perhaps reason enough to justify a deep analysis of a single example of mediatised debate that led to a number of institutional responses, including legislative reform, in order to explore the conditions that contribute to news influencing as well as informing public sentiment. An important aspect of this study then is to determine how news becomes

influential during public deliberation, which directs this research towards questions about the usefulness of news to people who seek influence.

2.3.3 *News access*

The question of who can access news organisations to inform and influence journalists and news production remains an important question in relation to democratic processes (Atton and Wickenden 2005; Castells 2007; Phillips 2010). As Cottle emphasises:

Who gets 'on' or 'in' the news is important—very important indeed. Whose voices and viewpoints structure and inform news discourse goes to the heart of democratic views of, and radical concerns about, the news media. (Cottle 2000:427)

The importance of how sources and other actors inform journalists is well established in the literature (Cottle 2000; Davis 2009; Phillips 2010). It is difficult to write about the source-journalist relationship without being reminded of Gans' observation that:

The relationship between sources and journalists resembles a dance, for sources seek access to journalists, and journalists seek access to sources. Although it takes two to tango, either sources or journalists can lead, but more often than not, sources do the leading. (Gans 1980:116)

Todd Gitlin (1980:7) found that the details, voices and opinions used in journalistic accounts 'organises the world both for journalists who report it, and in some important degree for us who rely on their reports'. Subsequent research around this idea of news access has contributed to work on media representation on contemporary controversies, such as climate change and terrorism (Altheide 2009; Castells 2009; Cohen 2011; Livingstone 2007), investigations into the competition between potential news sources to influence the news (Bennett 1996; Ericson et al.,

1989; Schlesinger and Tumber 1994), the media practices of professionals, such as public relationists and lobbyists, with increased access (Eliasoph 1988; Entman 2004; Freedman 2010; Gerbner 1966; Hallin 1994; Lester and Hutchins 2012; Schlesinger and Tumber 1994), and, finally, the way news media can contribute to social change and public policy issues (Callaghan and Schnell 2001; Philo et al. 1999).

If we are to investigate the role of media in public debate, we need to expand our concept of media to include those who influence and control it and the idea of news access works well when dealing with questions about the relationship between news media and the public because understanding who has access to news organisations goes some way towards explaining the role news plays in political and social life. The idea of news access provides a suitable framework to investigate the question of what affect news may have on public debate because it explains why some people and organisations seek to influence journalists and news content. This practice, and its influence on media, is described in the idea of agenda setting, which being formulated by McCombs and Shaw (1972), has become one of the most cited media studies concepts (Bennett and Iyengar 2008). The capacity for political interests to set the news agenda is also a major paradigm in political science, albeit with political science typically locating the polity and not the media as the group setting the agenda. As van Aelst and Vliegenthart (2013:4) observe, it is difficult to 'fully disentangle the intimate relationship between media and politics and especially the process by which this mutual influence comes about'. Even in controversies that appear media-driven, the role of organisations and their public relations officers can play an important role that is 'too often obscured by the relative visibility of the media' (van Leuven and Slater 1991:165).

This study requires a nuanced understanding of the interplay between journalists, their sources and other actors in order to determine the conditions and processes that informed news content. For this reason, it has drawn on ideas about news values, media effects and news access in order to determine how events

become items in the news. It has sought to emphasise how this process is a social action between interdependent individuals and groups rather than a process of evaluation and selection undertaken by journalists alone. Contests over news access, in order to control meaning and definition, are particularly conspicuous when social problems emerge in the public sphere. At these times, meanings and definitions are contested as individuals and their organisations are called to account for perceived wrongs. This case at the centre of this study can be understood in the context of a number of social problems, notably child sexual abuse and political and institutional impropriety. For this reason, some conceptual approaches to news coverage of social problems will be now considered.

2.4 Journalism and social problems

Journalism has long been associated with the process of discovering and defining perceived problems and a number of seminal media studies have considered the treatment of perceived social problems by journalists (Becker (1966, 1967, 1984; Callaghan and Schnell 2010; Cohen 1972; Dickson 1968; Gusfield 1963, 1968, 1989). For instance, Howard Becker (1966, 1967) investigated the American debates about drug prohibitions and described those involved in such campaigns as ‘moral entrepreneurs’ and ‘moral crusaders’. He (1967) argued that the success of moral crusades relied on how journalists privileged the social status of campaigners, coining the phrase ‘hierarchies of credibility’ to describe the journalistic tendency to privilege the opinion of authority and experts over lesser-known voices. This idea is comparable to concepts such as ‘dominant ideology’ and ‘primary definition’ (Chibnall 1977; Hall et al. 1978). Ben-Yehuda (1986) also noted that the success of actors attempting to engage with news media about perceived social problems relies on a number of factors apart from their social status, such as their ability to mobilise power and defy the resistance they encounter. Joseph Gusfield (1989:431) argues that

social problems are a feature of modern society because of the increasing expectation that public action can precipitate the required institutional response that can lead to 'resolving the resolvable', but he also cautions against assuming all welfare campaigns are social in nature, arguing that there is an important difference between social and political problems and that 'under the guise of a social problem many interests can be served' (1989:437). Becker and Gusfield provide the groundwork for studying social problems, but their work does not engage specifically with how these campaigns utilise news media (Goode and Ben-Yehuda 1994). This absence led to research into how news coverage contributes to public awareness about social problem and the idea of moral panic and risk society fill the gap.

2.4.1 *Moral panic and risk*

Research into how news media is used by authorities responding to social change and deviance was pioneered by Jock Young (1971) in his study of youth drug culture, but his ideas were more fully developed by Stanley Cohen (1972) in his investigation of news treatment of youth riots in the British seaside town of Brighton in the late 1960s. In this seminal work, Cohen described the news images that depicted young adults rioting in post-War Britain as more an example of rapid social change than anything warranting disapproval or legal action. Reflecting on this framing, Cohen suggested that:

Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylised and stereotypical fashion by mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then

disappears, submerges or deteriorates and becomes more visible (Cohen 1972:1).

Cohen paid scant attention to the cause of the riots and instead asked why news organisations saw fit to report on them. Cohen and Young (1981) expanded on the concept of moral panic by observing how news coverage represents deviance, arguing that journalists tend to fall back on stereotypes and established frames that 'lead to certain questions being asked and others being ignored' (1980:164). The argued that the power of a moral panic was found to lie in the capacity of one group to ostracise and assert legitimacy over another.

Studies into moral panic have since elaborated on the conditions required for moral panics to succeed (Jenkins 1992, 1998; McRobbie and Thornton 1995). Notably, Hall et al (1978) observed in their study of the apparent rise of muggings in Britain that moral panic can be initiated and fuelled not by media, but by institutions, such as police and the courts that rely on their social status to influence media content. More recently, Goode and Ben-Yehuda (1994:48) noted that a moral panic requires four components to come into play: deviance; social problems; collective behaviour; and social movements.

Some (Cavanagh 2007; Cohen 2011; Garland 2008) regard moral panic to be less relevant in contemporary media conditions because 'folk devils' are less marginalised than they were in the 1960s and 1970s. Conversely, others (Atmore 1997; Critcher 2009) argue that news plays a bigger role in labelling people deviant than once thought. Irrespective of this debate, moral panic as an idea has been integrated to the extent that moral panics are considered a genre of news reporting (Cottle 2006b; Goode 2000; Kincaid 1998; Ungar 2001). Moral panic is a compelling approach to observing how journalists label groups in society, and how the practice of making news, including the relationships between journalists and their sources, contributes to the construction of perceived social problems. For this reason, the term entered the general lexicon to become both a sociological truism used to

‘critique government policies and social control of deviance’ (Altheide 2009:84) but also a formulation for communication and political strategies (McRobbie and Thornton 1995:571). Thus, moral panic is used pejoratively to describe what is deemed an irrational response by media and the public to an event or condition (Bray 2009; Waddington 1986). There is also considerable debate about the difference between good and bad moral panics (Cohen 2011; Garland 2008; McRobbie and Thornton 1995).

Cohen (2011), reflecting on moral panic in his later years, observed that he, and other early moral panic theorists, did not take into account their own antagonism to the values about sex, drugs and youth culture being asserted in the panics they studied. He suggested that contemporary debates labeled as panics, such as child abuse and climate change, stand out for being moral contests that are less rhetorical and subject to relativist dismissal and called ‘the previously denied realities’ to be ‘brought to public attention, their dangers exposed, their immorality denounced (Cohen 2011:241). Others (Critcher 2009; Goode and Ben-Yehuda 1994; Killias 2006; Lull and Hinerman 1997; Lumby and Funnell 2011) have also noted that the relativist dismissal of some controversies as panic does not address the opportunities they can present for deliberation and social change. Of particular interest to this investigation, relativist dismissals of concern as moral panic does not provide clues as to how to avoid public and political deliberation devolving into panic (Cavanagh 2007; McNair 2006).

The changing media landscape, the overlap of news and entertainment, the blurring of boundaries between audiences and news producers, keeps the question of the media’s role in the construction and understanding of social problems and deviance inconclusive, but not redundant (Cottle 2006b; Hughes et al. 2011; McNair 2006). However, the representation of crimes in the case being investigated went beyond what could be described as panic to include other elements, such as scandal

and conspiracy. It is therefore necessary to consider the concepts used when discussing media representation of scandal and controversy.

2.4.2 Visibility, controversy and scandal

John B. Thompson's (1995, 2000, 2005, 2012) influential work on visibility in the news describes how changes in media technology, format and journalistic practice has combined to lift the veil of secrecy and privacy once afforded to public figures. Thompson observes that a lot of the symbolic power invested in media is the power to control visibility. Ideas around invisibility include efforts to control what is said and not said, shown and not shown in media as an explicit strategy to promote and publicly defend legitimacy (Lester and Hutchins 2012). Such contests are often performed as scandals and Thompson argues that the reach of media's gaze on the lives of the powerful has notably led to the increase in scandals involving rumours of social, moral or legal transgressions that harden into public accusations and episodes of public shaming.

Scandal has always played a role in political contest and it is the conflict and the use of scandal by challenger groups that makes scandal both newsworthy for journalists and worthy of study by researchers (Brenton 2012; Cottle 2006b; Thompson 2000, 2012; Tiffen 1999; Tumber and Waisbord 2004). Scandals have a lot in common with moral panic: both occur when actions are deemed by others to be improper or immoral (Lull and Hinerman 1997; Thompson 2000). Work on scandal generally concedes that scandalous acts differ from criminal acts and typically involve people with high public profiles becoming involved in events that are not always illegal, but certainly morally questionable (Lull and Hinerman 1997; Greer and McLaughlin 2012a; Thompson, 2000; Tiffen 1999). Sex scandals are sites where the boundaries of private and public are blurred and where the ambiguity of morality is highlighted. Rodney Tiffen (1999:4) regards sex scandals as particularly salient for journalists because, although they can be dismissed as being matters of

morality rather than law, they have the capacity for intensity and demands for resolution unmatched by most other political issues. Similarly, Thompson (2000:17) argues that sex scandals involving political elites are not easily separated from political scandals, but a sex scandal involving a political figure does not make the scandal a political one until the 'initial transgression' becomes the 'messy affair' that is overshadowed by more political concerns. Therefore, sexual crimes involving political figures can shift from being questions of legality and morality to more politically charged questions of probity. Like crime, scandal can also provide the morality play that informs conversations about normative expectations.

No doubt, scandals frequently contain sensational news values, which hold for some the value of watching the human frailties and downfall of society's elite, but there is more to scandal than voyeurism. Mediatized scandal can also raise important questions about the role of media in public debate and the communication strategies of the powerful. Reflecting on the controversy around the British phone hacking scandal and the fall of *News of the World*, Barbie Zelizer argues that scandals are important because:

'Sounding the alarm from somewhere in the environment, they give explicit form to activity usually unfolding on subterranean and largely invisible landscapes, forcing them – however momentarily – to the foreground of public attention. This is of particular use for journalists, who lack both explicit and codified standards for a wide range of action and who thus rely on scandals as reminders of when things have gone excessively awry. They are warning lights for those both within and beyond a given setting that things need to change [and come from] margins of institutional culture...where the most fruitful observational work lies. (Zelizer 2012: 627–629)

Scandal is about more than unwelcome visibility and signs of declining respect for authority. It is also a site of contest for control over visibility because scandal can draw attention to the wrongdoing of those in positions of power. For this reason,

this chapter will now specifically focus on journalistic practice around social problems and other controversial issues and, in particular, the rise of strategies used by those who seek to influence and control media representation.

2.4.3 *Journalism and accountability*

Social problems are potential causes of crisis for governments, private organisations and individuals when they are made visible in the news because these contests frequently challenge the legitimacy of individuals and organisations (McLean 2014). and the emergence of social problems in the news are typically marked by contests as the definition, cause and the agent deemed responsible for remedying it are identified. Such a process is central to media, as Djerf-Pierre et al. (2013) observe:

The question of who is responsible for causing (or resolving) social problems and who is to be held to account for political malfeasance and policy failures is thus increasingly a subject of struggle within the space of mediatised visibility. (Djerf-Pierre et al. 2013:961)

The struggle for visibility can be dismissed using pejoratives of media-driven scandal, witch-hunts or moral panic, but as the above quote attests, such criticisms can overshadow the usefulness of journalism to check against abuses of power.

The role of journalism to make visible the actions of the powerful is grounded in the idea of the Fourth Estate and much has been written in favour and criticism of journalists the public's watchdogs (Lewis et al. 1998; Schultz 1998; Schudson 2006). Investigative journalism epitomises the efforts of journalists to 'penetrate the mystery behind events' (Tiffen 1999:33) and 'reveal the truth' based on the perception that those in public life have something to hide (Schultz 1998:154). Less talked about in the literature is the accountability work undertaken by journalists (Djerf-Pierre et al. 2013; Simons 2007). Accountability refers to the democratic ideal of the promises and actions of political representatives being held to account and it includes the institutional mechanisms that ensure this occurs (Gutmann and

Thompson 1996; Stimson 1999; van Kersbergen; van Waarden 2004:156). Journalists scrutinise government institutions, social organisations and the private sector and, by exposing failure, injustice and abuses of process, call for accountability, that is, demanding answers, attributing blame and calling for corrective action (Ettema 2007; Schudson 1995; Thompson 2000). Journalism not only calls for transparency, but the subsequent visibility provides opportunities for public participation (Gutmann and Thompson 1996). This accountability work, argues Schudson (1995:217), allows news media to 'stand-in' for the public interest when the public themselves are 'not terribly interested'.

Accountability work is, or at least should be, the concern of journalists reporting on public and political life because it 'holds government officials accountable to the legal and moral standards of public service and keeps business and professional leaders accountable to society's expectations of integrity and fairness' (Downie and Schudson 2009:9). There is also the argument that accountability work is not just the job of investigative journalists, but of news per se (Djerf-Pierre et al. 2013; Rosen 1999, 2005; Simons 2007). As Simons (2007:253) suggests, many good news stories are found in 'the gap between what was meant to happen and what actually happens'. In this work, journalists should report in a way that not only reports and explains, but also 'compellingly renders reasons that satisfy' (Ettema 2007:145). However, there are a number of problems that journalists encounter in this work. These include the rise of public relations and the difficulties of building stories from information others would rather be kept hidden.

2.4.4 Public relations and imperfect knowledge

The rise of the professional journalist in the past century has been mirrored by the public relations professional. Public relations describes a wide range of strategies aimed at managing visibility in the mediatised space, such as marketing, advertising and communicating, but also includes the remit to predict and prepare for changing

public sentiment (Johnston and Zawawi 2004; McLean 2014). The rise of the public relations industry includes overt lobbying and marketing, but it also includes the less visible work of professional communicators who act as intermediaries and powerbrokers between journalists and the political and corporate elite (Davis 2002; Lewis et al. 2008; McNair 2011).

A key feature of public relations is to have a communication strategy that requires both a 'positive source reporter relationship' (Wigley and Zhang 2009:304) and also tactics for 'evading wider public scrutiny' (Davis 2003a:674). Crisis management in public relations typically describes the actions taken to counter negative publicity, that is, information that damages an organisation made visible by media and is increasingly tending towards a principle of disclosure rather than control or cover-up (McLean 2014). Such crises and the strategies employed to counter them often involve legal concerns (Pearson 2014). An organisational crisis can be described as:

A specific unexpected and non-routine event or series of events that create high levels of uncertainty and simultaneously present an organisation with both opportunities for and threats to its high-priority goals. (Ulmer et al. 2011:7)

McLean (2014) observes that crisis communication strategies often stumble when they involve the law, and more particularly, lawyers:

Lawyers operate in the court of law, with rules and regulations steeped in history, while crisis communicators operate in the relatively new court of public opinion, with a focus on perceptions and relations. Lawyers are engaged to protect the legal, regulatory and governance exposure of the organisation [which] conflicts with a crisis communication approach of 'tell it all, tell it fast, and tell it truthfully'. (McLean 2014:336)

The significance of the public relations—journalist relationship is seen as being on a spectrum of both altering the 'traditional hierarchies of media-source relations'

(Davis 2003b:27) and being 'characterised by mutual reliance' (Franklin 2003:58). Public relations is not just the tool of the elite in politics and big corporations, but is also used by non-government groups, for instance churches and environmental groups, that also wish to play a role in how issues are defined and deliberated (Demetrious 2014). In this sense, the rise of public relations can also be regarded as a result of an increasingly pluralised media landscape where 'public relations may be the only realistic strategy for a group to get media coverage' (Shoemaker 1989:215) and, as such, although public relations is often typecast as hostile to journalism's pursuit of accountability and transparency, the practices of public relations can also be seen as part of the communications environment that enables better information flows which benefit democratic deliberation (Breit 2011; Pearson 2014). Adding to the complexity of such moments of crisis, for journalists and those involved in managing information alike, is the fact that rarely does anyone have control over all the information that is available. The challenge for crisis communication is to determine not only what is known, but how it it may be understood. The element of imperfect knowledge is possibly the tipping point at which good news reporting turns to panic and fear. The challenge for journalists is to find and publish news stories when most journalism begins with 'imperfect knowledge' (Tiffen 1999:33).

The extent to which imperfect knowledge can be turned into news is a quotidian editorial conundrum. Sorting out what is known and unknown, fact or rumour, conceivable or absurd, or possible but frustratingly unverifiable, is what journalists must do, even when there is pressure from public relations officers and other useful sources to stop asking questions. Crises, such as scandals, are high-risk ventures for journalists. Scandals emerge in news media when journalists think they have enough information about a rumour to report on it or seek confirmation by publicising it. However, they run the risk of being wrong or, at least, being sued (Tiffen 1999). For those seeking to control the damage is the knowledge that the 'drama of concealment and disclosure' and the 'mechanisms of secrecy' are an integral part of

a scandal's career in the news (Thompson 2000:30). If visibility is central to scandal, what happens to public debate when there are widely circulating rumours but news media are unable to report them for lack of verification or threat of legal action? If scandals can shine a light into the concealed world of the elite, what occurs in public debate when rumours are raised in media, but only partly addressed by official statements? Or avoided or denied? At what point are deliberate actions to defuse an emerging scandal also deliberate acts of deception and dishonesty? These questions are important for this study because they are central to questions of public confidence in their democratic institutions, including news, and epitomised in the emergence of conspiracies, such as that which occurred around questions of political and judicial impropriety in this case study.

2.4.5 Filling the gaps with conspiracy

Conspiracy theories are generally met with scorn in educated circles. Like moral panic, conspiracy theory can be a label that quickly delegitimises an argument as irrational or uneducated (Bratich 2008; Clarke 2002; Coady 2003; Husting and Orr 2007). To call something a conspiracy theory effectively excludes the speaker from the imagined community of right-minded and rational thinkers (Coady 2006) and 'functions as an intolerable line and an antagonism' (Bratich 2008:11). For those in the knowledge professions, such as academics and journalists, conspiracy theory is effectively a four-letter word (Chomsky 2005). However, conspiracy theories also leak into the public sphere and mainstream news reporting and are an increasing feature in the media landscape (Byford 2011; Husting and Orr 2007). Husting and Orr (2007:147) caution against the quick dismissal of conspiracy theories because 'mechanisms that define the limits of the sayable must continually be challenged'. For these reasons, the elements of conspiracy that occurred in the case at the centre of this study were of particular interest.

The term 'conspiracy' is commonly used to explain events as being caused by secret plots rather than what is officially explained (McCauley and Jacques 1979). These suspicions are not necessarily far-fetched: conspiracy is a common term used in law to describe 'the joining together of two or more individuals and their acting in collusion to achieve a desired outcome' (Byford 2011:20-21). Conspiracies do occur and considering alternative explanations to events that include willful deception to serve a small group of people's interests is not irrational, as Watergate and other news events suffixed with 'gate' attest (Coady 2012).

Conspiracy theories can be sites in which the usefulness of the public relations-journalist relationship can be seen to have broken down and all the parties involved, including the journalists and their audiences, are left with contested and unsatisfying answers while the parties involved are embroiled in scandal and mistrust. The ideals of accountability jar with the 'openly secretive' government and corporate entities that are part of contemporary democracies and such discord can lead to conspiracy theories (Basham 2001). These ideas are not just for the disillusioned and disenfranchised; stories of cozy relationships, secret business deals and compromised officials are grist for the mill for journalists (Schultz 1998:17-18) and journalists do not have to buy into a conspiracy fully to investigate claims that are difficult to substantiate (Eldridge 1999). During a controversy, attempts by official sources to try to keep tight control on information can lead to secrecy and conspiracy becoming key major news themes (Eldridge and Reilly 2003:149). When personal experience and opinion does not accord with the official version, people are inclined to doubt media narratives (Couldry 2008:73). For these reasons, it is necessary to consider the increasing occurrence of conspiracy in news.

Conspiracy theories are more than a genre of absurd plots produced by uneducated or unreasonable minds. Political scandals and conspiracy theories can also be good locations for investigating how effectively those in power attempt to influence news media and, in turn, how effectively news media either represents or

challenges the communication strategies of the powerful (Clarke 2007; Coady 2003; Jolley and Douglas 2014; Miller 2002; Swami and Coles 2010). Denial, ad hominem attack and dismissal of others views and concerns are features of mediatised conspiracy theories and make legitimate areas of research into the relationship between media, power and public knowledge (Pelkmans and Machold 2011). Not only can the trajectory of a conspiracy theory be used to investigate the social factors that support their appearance in news media narratives, but scandal and conspiracy can also reveal the strengths and weaknesses of contemporary journalistic practice, in particular the role of accountability work.

2.5 Discussion: The social usefulness of news

This chapter has reviewed the literature relevant to questions about the social usefulness of news. It started by considering definitions of publics and civil society before considering the role of journalism in liberal democracies particularly. It located journalism as an important node in the network of people, organisations and institutions and communication that define society (Castells 2000b) The power of news to shape opinion and knowledge was discussed in terms of the contest for visibility and definition that is an essential element of the news making process (Thompson 1995). This case study is located in a mediatised debate about crime and responses to crime, and therefore the literature review focused on the factors that inform how perceived problems are treated in news. It discussed how the definition of the public is sometimes located in a binary that separates publics from the experts and officials that govern them. Three key concepts in media research were explored to provide a conceptual framework to consider how journalists, their sources and their audiences understand the value and values of news, the impact of news on individuals and society and the roles that journalists, their sources and other actors can play in the production of news. It then turned to consider the forces outside the newsroom that seek to influence news by looking at how public relations and

communications strategies aimed at influencing news content can be seen as both complementing journalistic work but also hindering accountability work.

The usefulness of labels is diminished when created around a binary forcing them to be defined by what they are not. As this chapter has discussed, the definition of the public is sometimes located opposite those that govern. In contemporary society, the line between those in power and the powerless is not so neatly drawn; sometimes those who are on the inner in some discussions are outsiders in others and, in a healthy democracy, power can come from the outsiders rather than the elite (Becker 1963; Goode and Ben-Yehuda 1994). That said, there is a social contract between the governed and those governing based on expectations of accountability. This study focuses on the question of the role of journalism within this social contract. It takes as a starting point the idea that journalism plays a intermediary role between people and those with considerable power over their lives. It is interested in the criticisms of journalism as failing in this role and is curious about the conditions that hinder good journalistic practice. For this reason, this chapter considered how public relations and communications strategies aimed at influencing news content can be seen as both complementing journalistic work and hindering accountability work. It also touched on how law can complicate efforts to explain and elucidate, which will be explored more fully in Chapter Three.

The rise of public relations and its increasing convergence with news practice is occurring when newsrooms are cutting staff and demanding reporters produce more content. Newsmaking is said to be in crisis: technological and economic pressures are changing not only how we receive our news, but forcing us to question the ethics of news production. Ethical practices and adequate resourcing are linked; poorly resourced media operations have been found to force reporters to cut corners in their research and reporting (Pearson et al. 2001:13). Poorly resourced newsrooms also lead journalists to rely on professional news sources to the extent that it challenges

their capacity to hold authorities and others to account (Lewis et al. 2008). As Aeron Davis observes, the influence of public relations means that:

Although journalists get to pick and choose what they want to use, and they retain their conscious autonomy, they are, in effect, making reactive choices – rather than pursuing proactive investigations.
(Davis 2003b:32)

Michael Schudson (2003:157), writing about the shifts in media and society more generally, observes these changes all interact to create a system in which the role of the media is central – but not supreme nor paramount.

What is apparent is the social usefulness of mass media to how people understand the world beyond their own lived experience and the experiences of people they know. It is newsmaking that most explicitly claims to be reveal and interpret the actions of others that are useful, indeed necessary, to know. This claim is tied to the idea of news values and the notion that some issues and events are inherently of value to public interest or, at least, of interest to people. This claim also raises important questions about who decides what these values are and how events and issues are defined both as news, but also *in* news.

In order to examine how news media can be more socially useful, this chapter sought a nuanced understanding of what is meant by the terms ‘the public’ and ‘public interest’ before discussing some of the theoretical approaches to news media and democratic deliberation. It considered how news brings subjects that are secret and private into the public domain through the various conceptual lenses of moral crusades, moral panic, risk society, scandal and conspiracy. It also considered the various roles that journalism plays, which includes making sense of events, exposing injustices and holding those in power to account. It is now time to turn to the particular social problem at hand: the commercial sexual exploitation of a child. In order to discuss why the controversy in Tasmania, it is necessary to contextualise these crimes within the contemporary anxieties about children. The sexual nature of

these crimes demands that this review now turns to examine more fully the literature relating to representations of children in media.

3. CHILDREN AND NEWS

3.1 Introduction

The sexualised representation of children is a well-established subject in mass-media and media scholarship (see Smith and Attwood 2011). However, the controversy attached to discourses around the sexualisation of children is not just about contemporary representation and an unrestrained media: the young have always been both sexual and sexualised by others and, therefore, ideas of consent around matters of sexuality are historical. Contemporary public and media interest in the subject of children and their sexualisation can be seen as a result of increasing visibility of matters once deemed private or taboo, the expansion of the public sphere extending to children's rights, and an increasingly permissive social attitude to the visibility of sex. One aspect of this increased visibility is the growing awareness of the involvement of children in commercial sexual exploitation. While the crimes at the heart of this story occurred within a context of social disadvantage, they were specifically sexual crimes. For this reason, it is necessary it is necessary to investigate the literature relating to ideas around children and childhood in order to interrogate the definitions, meanings and assumptions in terms such as child and innocent, especially in relation to discourses around prostitution. This chapter begins with an historical overview of childhood as a cultural and social construction, before focusing on more contemporary discourses around children and sexuality. Central to these concerns is the spectre of the child sex offender. The discussion then turns to specifically examine recent shifts in discourses around child sexual exploitation, which serves to locate the crimes central to this study within a shift in attitudes, responses and representation that can be seen to be occurring internationally. The chapter concludes with a discussion on the important and

ongoing role of media in publicising the emerging awareness of the commercial exploitation of children.

3.2 The history of children as seducers

Children have not always been sacred, their innocence unquestioned or their protection from adults a moral imperative (Zelizer 1985; Killias 2000; Kincaid 1998; Shanahan 2007). Philippe Aries' (1978) seminal French study on the history of European attitudes towards childhood argued that childhood, as a stage of life distinct from adulthood, was 'discovered' by an emerging middle class in the sixteenth century that served to separate children from the social and working lives of the adults around them. Foucault (1982) developed Aries' structuralist perspective, by linking the emergence of the child in Europe with the rise of the nation state and its interests in controlling individuals.²⁵ These claims, that childhood is a social construction of the Enlightenment, sparked a plethora of studies to locate the historical origins of childhood with the resulting scholarship finding no singular emergence of childhood (Jenkins 1998; Shanahan 2007). These debates appear to stumble on defining the ambiguous: infancy and adulthood are relatively identifiable bookends to a period of transition towards greater agency and responsibility, including the capacity to consent to sexual activity with others. While the emergence of childhood as a status is contested, the appearance of children in the statutes of Europe and the New World in the sixteenth century offers some clues to some of the ambiguities around children and sexuality.

Before the Enlightenment, protecting children from any exploitation was neither a moral nor legal question (Fishman 1982). Martin Killias (2000) argues that sexual morality, of children or anyone else, barely featured in the laws of Europe at this

²⁵ While Foucault is now most associated with post-structuralism, he did come of intellectual age during the rise of structuralism and his early work reflects this influence (Kurzweil 1996).

time. Rather, the two areas of concern for heterosexual deviancy were prostitution, which was not entirely prohibited but controlled to certain districts, and sexual relationships involving people already married. Killias locates the introduction of the concept of the age of consent for sexual activity as occurring when Europe's bourgeois began using the church-sanctified marriages of their children to accumulate wealth by striking alliances with other families. With this practice came the question of a suitable age of consent, with consent granted by the parents, not the child. Until the sixteenth century, only pre-pubescent girls were regarded as too young for marriage, but by 1577 statutes throughout Europe, and soon after in the New World colonies, introduced the age of consent to 12 years. Zelizer (1985:209) notes that the shift to distinguishing between children and adults was resisted by the rural poor in Europe and its colonies until as late as the eighteenth century because adulthood was not a question of sexual maturity, but one of physical aptitude, or 'economic usefulness'. By the eighteenth century, the welfare movement, in response to children's vulnerability to exploitation, began to act in defense of children, such as taking children from the factories and mines of the industrial revolution and putting them in school (Platt 1969; Zelizer 1985). The recognition that children are both vulnerable to abuse and also require care and education began to define children as separate from adults. This recognition also shows that the so-called construction of childhood is not entirely based on morality. Instead, discourses around childhood over the past few centuries can be seen to be based, in part at least, on a social good rather than hegemonic control (Kincaid 1998; Shanahan 2007). As historian Lloyd deMause puts simply:

Childhood was constituted by the advent of a caring and concerned ethos toward children. Thus, prior to childhood, the lived experience of children was often a nightmare of physical, sexual, and psychological terror and neglect. (deMause 1974:1)

Debates about children should be premised with the acknowledgement of the power imbalance between young and mature people. The current, widely expressed condemnation of paedophilia in both media and other discourses is one example of the relatively recent awareness of this inequality. In keeping with the negligible legal status of children discussed earlier, paedophilia was regarded as a 'rather un-noteworthy form of sexual excess or deviation' before the nineteenth century welfare movement rose to the defence of children as 'innocents' (Angelides 2005:272). The problem with defining children as 'innocent', however, was that it left the child deemed to be sexually experienced, or otherwise responsible for seduction, as no longer innocent and no longer a 'normal' child (Ayre and Barrett 2000; Brown 2004; Gooren 2011). The idea that children can be responsible for seducing older people, as well as assumptions that sexual advances towards apparently willing children are not always serious offences, remains in the sediment of contemporary social attitudes and legislation.²⁶ As such, the ambiguous status of the sexually experienced child, especially in terms of the harm that is done to them by others, remains contested in society and law. The abuse of the sexually naïve child appears more readily condemned than the exploitation of a young person who appears knowledgeable of sexuality. This binary, of the child as seducer and thus her abuser as less blameworthy for the abuse, was part of the discourse around the abuse of the child at the centre of this study. Arguably, this binary is also at the heart of current debates about child grooming more generally.

²⁶ For example, in the 1990s, an American judge described the rape of a seven-year-old girl by a builder as 'one of the kinds of accidents which could happen to almost anyone' (Wykes 2001:147). In Australia, legal academic Wendy Larcombe (2008) identifies three recent decisions in Victorian courts where judges have described the rape of a child as 'a foolish lapse'. In 2014 New South Wales Judge Garry Neilson, in a case of a man accused of raping his younger sister, said that, just as gay sex was socially unacceptable and criminal in the 1950s and 1960s but was now widely accepted, 'a jury might find nothing untoward in the advance of a brother towards his sister once she had sexually matured, had sexual relationships with other men and was now "available"' (Hall 30.7.2014).

The child as seducer is epitomised in the idea of *Lolita*, the eponymous protagonist in Vladimir Nabokov's (1955) classic about a 12-year-old raped by her narcissistic step-father Humbert Humbert.²⁷ The numerous book covers and movie posters of *Lolita* usually combine an unsettling juxtaposition of girlish signification, such as lolly-pops and hair-ribbons, alongside the pouting lips and enticing posturing that signify the sexualised female. It is a story of how the abuse of a child can be justified by an abuser who regards some children as different to normal children. As Humbert Humbert explains:

Between the age limits of nine and fourteen there occur maidens who, to certain bewitched travelers, twice or many times older than they, reveal their true nature which is not human, but nymphic (that is, demoniac); and these chosen creatures I propose to designate as 'nymphets' ... the little deadly demon among the wholesome children; she stands unrecognised by them and unconscious herself of her fantastic power. (Nabokov 1955:16)

Lolita has become a term that signifies the idea of the sexually willing child. Angelides, cites an unnamed 1970 sex education text, as an example of how this tropism works:

There is the incontrovertible fact, very hard for some of us to accept, that in certain cases it is not the man who inaugurates the trouble. The novel *Lolita* ... describes what may well happen. A girl of twelve or so is already endowed with a good deal of sexual desire and also can take pride in her 'conquests'. Perhaps, in all innocence, she is the temptress and not the man. (in Angelides 2004:144)

²⁷ While commonly understood to be a love story, *Lolita* is a story about abuse. Firstly, Humbert Humbert himself admits he knew he was committing statutory rape (1955:148); that he 'broke' her life (1955:277); and, that by reminding her she was a minor with nowhere else to go, he was able to terrorise the child into secrecy and guilty, but not keep her happy (1955:149). Humbert Humbert also admits having to pay her for sex, which she accepted 'listlessly' and, afterwards, that she would cry herself to sleep (1980:181); and he describes himself as 'despicable and brutal' (1955:284). In short, although he believed he loved *Lolita*, Humbert Humbert was certainly not the child's lover.

The idea of *Lolita*, which normalising male desire for pubescent children, continues as this article, published in men's general magazine *Gentleman's Quarterly*, illustrates:

Since *Lolita*, the window of innocence has been closing, leaving us benighted souls to wander through the mall confronted by the ass cleavage, thong outline, and hooker makeup on the 13-year-old ahead of us, who is veering off to enter Hot Topic. Those mythic forbidden nymphets - who have not just puerile hips and pale breast buds but a dewy eagerness, a trusting vulnerability - are doomed in an era of cardio strip classes and flavoured body glitter. Where exactly is the light of our life, the fire of our loins, when 10-year-olds wear JUICY on their butts? The quaint days of proto-perv Humbert Humbert are clearly over. (Norris 2005 cited in Bray 2009)

And, in another example, the late Christopher Hitchens, in an essay reflecting on the enduring appeal of *Lolita*, suggested the sexual desirability of young girls is 'common':

The common joking phrase among adult men, when they see nymphets on the street or in the park or, nowadays, on television and in bars, is 'Don't even think about it'. (Hitchens 2005)

Lolita is more than a symbol of the sexualised girl. The enduring image of Nabokov's 'nymphet' remains, as Abigail Bray (2008:323) describes, a 'self-serving pedophilic fantasy that girls want to have sex with adult men.

The idea of 'nymphets' whose apparent willingness serve to absolve their abusers, is one way of talking about sexual activity between adults and children, but it does little to engage with questions of consent and harm. As discussed earlier, the evolution of childhood emerged alongside notions of a minimum age for marriage and the prohibition of sex before marriage which served to exclude sexuality from the lives of children (Angelides 2004; Killias 2000). However, since Freud (1963) published his ideas on children's sexuality in 1907, the legal and moral controls on

sex have included a growing acceptance that children and adolescents are sexual beings and that sexual activity between young people is common.²⁸ The social mores around sexuality, especially sex outside of marriage or between consenting teenagers' have relaxed and the visibility of public debates around matters once deemed private have increased. Into these discourses around sexuality and consent, the hoary question of adults who seek children for sex has come to the fore as an emerging social problem of an age-old activity.

3.3 Contemporary debates about paedophilia

Children are increasingly visible in political and cultural life and some of the discourses around children show some of the defining characteristics of modernity: the ubiquity of the sexualised image; the saturation of media in daily life which promotes free-market ideals and consumer choice; and the continuing emergence of individuals with legal, cultural and civic standing (Hartley 1998). Some of the mediatised debates around the rights of children are described as being moral panics (Altheide 2009; Atmore 1997; Jenkins 1992; McKee 2010). While moral panic may be a feature of discourses that cast child abusers as contemporary 'folk devils', investigating media interest in the sexual abuse of children requires a more nuanced approach than dismissing concern as moralism or distortion.

Concern for the sexualisation of children in media representation has led to an explosion of academic and popular writing. Critiquing the literature, Smith and Attwood (2011:328) note that authors tend to ignore 'a rich and well-established body of theoretical and empirical work on the relationship between sex and media, culture and technology' in preference for a 'highly negative view of sex, media and young people'. One of the key complaints about this trend is that both mainstream

²⁸ For instance, a 2008 survey of Australian secondary school students (Smith et al. 2009) found that more than half of students in Year 10 many of whom would have been under 16 years, had engaged in sexual touching, 33 per cent in oral sex and more than a quarter in sexual intercourse.

media and some research frequently conflate different problems, such as eating disorders and sexualisation, as though they are rooted in the same cause (Donnerstein and Smith 2001; Smith and Attwood 2011; McKee 2010). Another complaint is that the debate about the sexualisation of children serves certain political ideologies (Crichter 2003; Fox 2013). Medias' role in the sexualisation of children is variously framed in terms of the positive outcomes of liberalism or the negative results of social breakdown, which are typical during contests around the agency of any group that emerges into the public sphere (Fraser 1990; Shanahan 2007; Taylor and Ashford 2011). In Australia, the question of the sexualisation of children by media flared into heated popular and academic discussions about so-called 'corporate pedophilia'²⁹ that led to the Australia Institute, a left-leaning Australian think tank, commissioning a study in which the final report (Rush and La Nauze 2006) found that Australian girls are facing increasing sexualising pressure that could be harmful. Critics of this report argue that it did not challenge assumptions that children should be free of desire (Faulkner 2010), that it was a response to disapproval about 'working class sexual behaviour' (McKee 2010: 136–137), and it did not find a causal connection between media representation and child sexual abuse (Lumby and Albury 2010).

One of the sticking points in this debate, which leads us back to *Lolita* in many ways, is the conundrum of conflating sexual desirability with youthfulness while simultaneously condemning paedophilia and the sexual desire for the young (Bray 2009; Faulkner 2011). The association of youth, nudity and beauty, for instance, with paedophilia, played out in Australian news and current affairs in 2008 when New South Wales Police raided an exhibition by photographer Bill Henson, after complaints from child protection advocates about the photograph of a naked 13-year-old girl used to promote Henson's exhibition. Despite Henson having an

²⁹ A phrase coined by Australian columnist and broadcaster Phillip Adams.

established international reputation for his photographs of young people, his work was temporarily confiscated while mediated debate raged about whether he should be charged with producing child pornography.³⁰ Both the Henson controversy and the question about corporate paedophilia in Australia were framed and dismissed as being moral panics (Bray 2008, 2009). Of interest to this study is the representation of child sexual exploitation in the news and the extent to which the discourses around the crimes informed the public understanding and institutional responses to them. For that reason, the debates around so-called corporate paedophilia and the Henson scandal are indicative of the intensity around the question of the sexualisation of young people. While aspects of these debates include the moral, they also involve serious questions of power and harm that are not easily dismissed.³³

Central to the work of David Finkelhor (1979) is the concept of the age of consent as an important social mechanism that engages with the question of power. He argues that debates about children and sexuality should not become mired in questions about morality, social good or other relative concepts, but instead need to be addressed in relation to power and its abuses; while even young children may be sexually aware, it is the power imbalance that makes the question of adults who seek children for sex, even children apparently interested and willing to engage in sex, wrong. In relation to sexual activity, argued Finkelhor, consent requires two conditions: that a person fully understands what they are consenting to and that they should be free to give that consent. In the first instance, to fully give consent to sex would mean a person is of an age to understand the consequences, such as

³⁰ The Henson debate was not isolated. Other artists have encountered the controversy about whether consent can be sought to photograph naked children, such as Larry Clark's photographs of drug-addicted teenagers that included a close-up photograph titled 'Prostitute Gives Teenager His First Blow Job' and Sally Mann's 1992 photograph of her daughter lying on a divan 'Venus After School' (Adler 2001). In the UK a similar debate about art in 1989 involved threats to withdraw arts funding if museum displays were inappropriate (Altheide 2009).

³³

pleasure and intimacy, but also pregnancy, sexually transmitted disease and the social stigmatisation, all of which can have long lasting effects on a person's life. The second condition is a question of duress: even if a person understands these consequences, they need to be free to give consent without duress. He argued that even when children are old enough to understand, or at least think they understand, the consequences of their behaviour, the power imbalance between children and adults challenges the assumption that children can be in any position to give consent to sex with adults that is free of duress. Finkelhor's criteria for informed consent are a useful conceptual tool to use in situations where children are sexually involved with people older than them.³⁵ This understanding of consent removes the relativity of morality and even harm and, instead, emphasises a lack of power and choice. It is particularly useful when considering the appropriateness of sexual activity that at first instance appears to be consenting, such as when children are engaged in so-called 'sex work'.

While 'stranger danger' and the warnings about the places that children should avoid has long been taught to children, it was not until the 1970s that feminists called for more awareness and action on perpetrators who were family members or otherwise known to the children they assaulted (Angelides 2004; Gordon 1988; Greer 2003). This increasing awareness of child abuse required media, including news, to provide visibility to a 'taboo' subject as a point of departure for shifting public attitudes that allowed the sexual abuse of children to go unreported. Indeed, prior to the 1970s, journalists were as likely to collaborate with offenders and official denials to avoid public scandal as they were to report abuse (Jenkins 2006). By the 1990s, journalists were actively reporting revelations of child abuse in institutions such as

³⁵ There is a growing body of research suggesting that a significant number of child sex offenders are under 18 (Smallbone and Rayment-McHugh 2013). The ambiguity of age in determining socially acceptable sex play between children and sexual abuse by older children, who because of their age have authority and power over the younger child, is also a complex issue (see Finkelhor 2010; Tasmanian Law Reform Institute 2012b).

churches, orphanages and boarding schools (Adler 2001; Beckett 1996; Goddard and Saunders 2001; Jenkins 1996). The problem for journalism is that while news reporting played an important role in changing social attitudes, laws and institutional practices in relation to news coverage of sexual abuse, it can also be criticised for detracting from the broader concern for children's welfare such as poverty, and for generally skewing public understanding of a complex and little understood social problem (Atmore 1997; Garland 2008; Hughes et al. 2006; Kitzinger 1996). For instance, Jenny Kitzinger (2002) observes that news coverage of high-profile paedophiles and the moral panic around paedophiles serves to work as a stereotype that overlooks the prevalence of sexual violence in society. Another criticism, and one that is central to this study, is that media interest in child sexual abuse rarely extends to young people who solicit sex in exchange for money or other favours (O'Connell Davidson 2005). Commercial child exploitation, or the poorly phrased 'child prostitution' raises a unique set of ambiguities around questions of consent, abuse and power and formed part of the media discourse around the crimes central to this study.

Like all child abuse, child sexual exploitation is not a new problem, nor is it limited to the more conspicuous settings of brothels and street-walking. Historian Linda Gordon describes the opportunistic adult who sought children for sex in exchange for money or favours as the 'pervert' or 'dirty old man' who knew that:

The children of the very poor ... could be bribed into acquiescence and silence with a nickel, an orange, a pail of coal [by people who were] often neighbours, accepted members of communities, often small businessmen or janitors who had access to private space. (Gordon 1988:59)

In their review of the literature, Grant et al. (2000:71) found there is a dearth of research into this kind of sexual exploitation in Australia before 1998 and noted that recent work is a 'minefield of ambiguity, inconsistency, and moralism around

children and sex, especially commercial sex'. Society and the law have historically regarded the child who accepts payment in exchange for sex differently to the assaulted child because the act of transaction implies the child acted knowingly and not out of innocence. So how are we to talk about commercial sexual exploitation? Such an examination of discourse requires some investigation of discourses around prostitution, which is particularly useful for this study because, although the child involved was 12-years-old at the time of the crimes, she was advertised as 18-years.

The social acceptance of 'the oldest profession' is reflected in the absence of prostitution from early legal statutes (Duschinsky 2010; Goddard et al. 2005; Killias 2000; Rush 1980; Sanger 1869; Wykes 2001). As such, a blind eye has long been turned towards the health, safety and legal rights of prostitutes, and the legal and moral status of those who buy sex (Sanders 2005, 2008). However, by the twentieth century, thanks in part to an increasing acceptance of subjects once deemed taboo, prostitution and other activities became increasingly visible in news and other media. For instance, in the mid-1950s in Britain, street solicitation and a number of high-profile men being charged with homosexual offences led the British government to commission an inquiry into homosexuality and prostitution in London. Gleeson (2004:104) notes that the resulting *Wolfenden Report* marked a turning point for the modern liberal view of prostitution, including its formula of 'consenting adults in private' its 'distinction between personal morality and criminal harm' and its perpetuation of the assumption that prostitution exploits 'the human weaknesses which cause the customer to seek the prostitute and the prostitute to meet the demand' (see also Ayre and Barrett 2000). Since *Wolfenden*, modern discourses around prostitution have tended to perpetuate the idea that prostitution is an unfortunate but inevitable social phenomenon with the onus of blame on sex workers rather than on those who pay for sex (Bird 2005; Gleeson 2004). This quasi-legitimisation of prostitution presents a paradox, especially for feminists. Those who argue that women ought to have the right to choose sex work face the question of

exploitation, violence and drug abuse associated with the trade, and those who condemn prostitution for perceived harm also find themselves in an uneasy alliance with Christians and other moralists (Travers 2009). This paradox may explain the historical tendency to simultaneously condemn and turn a blind eye to sex work (Wykes 2001). However, modern demands for permissiveness and transparency challenges this historical blindness and has led to the 'mainstreaming' of the sex industry in Australia and elsewhere (Sullivan 2010:103). This once barely tolerated activity is increasingly being represented as an acceptable, even aspirational, occupation where even the much-maligned 'pimp' has a new-found lustre in contemporary language (Davis 2013; Walter 2010). The question remains, however, as to whether the increasing visibility and acceptability of commercial sex work will bring the cultural gaze to the clients, or 'johns', who have historically slipped away from family life and professional obligations to buy sex, assured of the anonymity and a degree of legal immunity.

The ever-dynamic media landscape is also changing the way sex work is seen and sold. Developments in handheld communication technology ensures more discretion because online advertising eliminates the need for a 'shop front' or other public forms of advertising so the red light district has shifted to the Web. These changes have resulted in sex work simultaneously increasing in occurrence while disappearing from public view (Jeffreys 2010:211). In Australia, only 10 per cent of the sex industry is t to operate out of brothels while 90 per cent takes place in 'underground, illegal sex markets' (Poinier and Fautre 2010:6). The extent to which children are involved within these 'informal' structures of prostitution or transactional sex remains little understood.³⁶

If prostitution is the oldest profession, then commercial child sexual exploitation may be the oldest apprenticeship, but there is little research into how we have

³⁶ Grant et al. (2000:275) conservatively estimated that about 400-450 children across Australia are engaged in commercial or quasi-commercial sexual activity during a typical 24-hour period.

historically treated children drawn into the sex industry. Historian Alyson Brown's (2004) review of child prostitution found that published and archival material on the subject is limited, but in Britain and Europe perpetrators were typically depicted as nefarious child sex traffickers until the child welfare movement of the nineteenth century identified the role disadvantage played in leading children into the sex trade. Reviewing the Australian literature on child sexual abuse, historian Yorick Smaal (2013) also observes a notable absence of literature on the history of child abuse despite the subject being a growing field of study. What is known is that discourses around prostitution inform the way we regard children caught up in the sex trade (Lavoie et al. 2010) so, how are journalists and others in media to talk about children who are involved in sex for money and other favours without succumbing to the language of prostitution?

3.4 Neither prostitution or assault: transactional sex

The term 'transactional sex' describes sex that is neither non-consensual, such as assault, nor clearly demarcated as prostitution. Such a definition usefully challenges assumptions about choice, consent and power (Blagg 1989; Holmes and McRae-Williams 2011; Walker 2002). A further assumption is the idea that child sexual exploitation is a problem for poorer populations but, as Wood and Jewkes (2001:96) suggest, transactional sex between adults and children also occurs in affluent countries as well as developing countries for similar reasons, such as: 'poverty, mind numbing boredom and the lack of opportunities or prospects for advancement'. Although the terms prostitution and transactional sex provide a useful distinction in relation to children involved in trading sex for money and other favours, the language of prostitution continues the commercial sexual exploitation of children continues to be described in terms such as pornography and prostitution in

legislation, courts and in the news.³⁸ The historical predicament of what to do with the no-longer innocent child remains part of contemporary media discourses around child prostitution and paedophilia, which serves to hinder an examination of the wider social conditions that can contribute to the abuse (Atmore 1997; Kohm 2009:191; Meyer 2007; Redfern 1997) and is occurring at a time when the social acceptability of prostitution and pornography has increased. If crimes are opportunities to examine social values, then the discourses around crime are very important. It seems, to date, that Australia and other parts of the world are at an important turning point in the way transactional sex, and other aspects of child abuse, is discussed. Understanding this cusp offers some insight into the conflict and contest that occurred in Tasmania during the study period and will now be described.

Child abuse involving transactional sex has long been framed in the news using the discourses of prostitution. For instance, an analysis of two major Australian daily newspapers over a two-year period (Goddard et al. 2005) found that the language used for crimes involving children abused by an adult in a position of trust, such as a priest or a member of the family, differed from the language used for cases of commercial sexual exploitation of children. In these cases, terms such as 'brothels' and 'pimps' were found to portray the crime as prostitution rather than abuse, which shifted attention to those who coerce children into these situations and away from those who pay to abuse them. They concluded that this language 'effectively transmogrified the rapist into a customer' and constructed the child 'as an accomplice to his or her own sexual abuse' (2005:281–286). The shift in the language used to describe these crimes is occurring. For instance, in 2014, the Australian

³⁸ The blurred line between child sex work and legitimate prostitution can be found in research into Australians who travel for so-called sex tourism. O'Connell Davidson and Taylor (1996) found that the number of those who deliberately seek out young children for sex in South East Asia are a small percentage of those who pay for sex with people under 18 years. Haug (2001) found adults who paid for sex with children in Europe frequently did not see themselves as paedophiles, but as consumers in a legitimate market.

Federal Police issued a press release alerting journalists to stop using the terms and language associated with prostitution and pornography with child sexual abuse (Australian Federal Police 2014).

Another shift that is occurring in some public debate around child sexual abuse and exploitation is the inclusion of the actions and practices of professionals and institutions, such as teachers, whose actions, or inaction, enable these sexual crimes to occur. For instance, recent inquiries include the on-going Australian Royal Commission into Institutional Responses to Child Abuse (Australian Royal Commission 2014), in which a key consideration is the *mechanisms* by which prominent and institutionally connected individuals were able to repeatedly adapt the systems of their workplaces in order to sexually abuse children; the Commission of Investigation into Catholic Archdiocese of Dublin (Murphy et al. 2009); the investigations into the grooming of girls for sex in the UK boroughs of Rochdale (Rochdale SCB 2012) and Rotherham (Jay 2013); and the Operation Yewtree (Gray and Watt 2013) in Britain. These inquiries will now be discussed in order to examine and tease out the shifts in how these crimes are being treated and investigated by authorities. News, when reporting on these cases, is seen to be serving to not only represent the justice process, but contribute to this process.

In the Rochdale case, Greater Manchester Police were alerted to allegations that teenage girls were being groomed for sex in early 2009, when a pregnant 15-year-old girl told police she had been abused by a group of men she had met at a takeaway food store (Rochdale SCB 2012). Police investigated the allegations, including taking a six-hour video testimony from the girl and collecting DNA evidence, but the regional head of the Crown Prosecution Service decided a jury would not view the girl as a credible witness and the investigation was dropped. In 2011, another girl made complaints. This time, the new regional head of the Crown Prosecution Service, Nazir Azfal, decided to investigate her claims and, following some investigation, included the complaints made by the girl who had first come to police

in 2009. Nine men were eventually found guilty and charged with giving the girls free cigarettes, food and taxis as part of a 'friendly' relationship that later led to the girls being given alcohol and drugs so the men could 'pass them around' (Airey, BBC News, 8.5.2012). News coverage of the trials and related matters was both lauded and criticised. The *Guardian* and *Times* newspapers, using Freedom of Information laws, revealed the extent of the allegations that were not investigated or prosecuted and the professional attitudes and actions of those who knew of the girls' predicament but did not act. For instance, despite the girls being forced to have sex with up to five different men a day at least four times a week, police were found to have assumed that the girls had 'consented' to sex as part of a 'lifestyle choice' (Ayre and Barrett 2000). This reporting led to investigations into a full investigation by the Children's Commission (Berelowitz et al. 2012:47), which found that children and young people were frequently described by welfare professionals as being 'promiscuous', 'liking the glamour', 'prostituting herself', being 'sexually available', and 'asking for it' and concluded by saying 'this labelling reflects a worrying perspective ... that children are complicit in, and hence responsible for, their own abuse'. Although news reporting contributed to a thorough review of child protection in Rochdale, news coverage was criticised by some for being too graphic, such as the *Guardian* reporting that one of the victims had been 'raped by two men while so drunk she was vomiting over the side of the bed' (Williams 27.9.2012). As such, Rochdale is a good example of the conflict between news values and the difficulty of reporting crime in a way that is compelling enough to trigger social action without triggering offence.

The Rotherham case followed Rochdale and had similar features. In 2012, journalists from *The Times*, using confidential documents from the police intelligence bureau, social services and other organisations, revealed the extent of problems with child exploitation in Rotherham and the lack of action being taken by the South Yorkshire Police and the Rotherham Borough's child protection system (see Norfolk

9.1.2013). The newspaper went so far as to suggest that reports of the allegations were being ignored police officers that allowed the perpetrators to act with ‘virtual impunity’ (Norfolk 24.9.2015). The independent inquiry that followed (Jay 2013) into the allegations raised by the newspaper revealed that as many as 14,000 children between 1997–2013 were ‘raped by multiple perpetrators, trafficked to other towns and ... abducted, beaten, and intimidated’, that a third were already known to child protection services and ‘the scale and seriousness of the problem was underplayed by senior managers’ (Jay 2013:1). Jay found that, at an operational level, the Rotherham Police gave no priority to child sexual exploitation, regarded many victims with contempt and failed to act on the allegations of abuse as crime. In response to Jay’s report, the UK Deputy Children’s Commissioner, Sue Berelowitz (who also authored the independent inquiry into the Rochdale scandal), described the alarming rate of child sexual exploitation in England to be a result of a culture of ‘willful blindness’ about the scale and prevalence of sexual exploitation across local government and police (Ramesh 28.8.2014). The term, ‘willful blindness’ both evokes the blind eye that has historically been turned to the difficult question of prostitution and other sexual acts deemed to be deviant, and also the role of news to provide the antidote to blindness which is visibility. In both the Rochdale and Rotherham cases, news organisations played a substantial and important role in not only revealing the problems, but also maintaining pressure on authorities, such as police and other professionals working with children, to review and change the institutional practices and procedures that had allowed a blind eye to be turned to the harm being done to these girls. However, media organisations have also been implicated in participating in this blindness. Most notably is the case of British entertainer Jimmy Savile which resulted in Operation Yewtree. The crimes of Jimmy Savile and many of his associates surfaced in 2012 after investigative journalist, Mark Williams-Thomas, a former police officer, produced a report based on allegations against Savile by five victims. A solicitor acting for many of Savile’s victims described the failure by police

and the BBC to join the dots about the star's behaviour over decades as the 'collective myopia' that contributed to the crimes occurring for decades without action (Halliday 11.5.2013).⁴⁰ News reports about Operation Yewtree, which was set up in response to allegations against Savile, has been considered to be part of the success of the Operation that has seen other entertainers charged, including Australian entertainer Rolf Harris (Gearin 30.8.2012) and Garry Glitter (Booth 29.10.2012). The final report (Gray and Watt 2013:11) found that sustained media coverage contributed to more people coming forward to make complaints about Savile and others. Gray and Watt (2013:24) also observe that 'a significant rise in the level of reporting of past sexual abuse of children ... is believed to be the result of media coverage about Jimmy Savile and victims'. The changes in how we talk about child sexual abuse, which has moved from blaming the child to blaming the deviant offender and, more recently, to challenging attitudes towards children, should be understood as important social developments. As well as holding the relevant institutions to account, journalism in these instances can be seen as ensuring news coverage does not carry the hallmarks of moral panic and can contribute to social action.

3.5 Discussion: Child sexual exploitation and the news

The contemporary interest in children, and their sexuality and sexualisation in particular, can be seen as a result of the increasing visibility of matters once deemed private or taboo, the expansion of the public sphere extending to children's rights, and an increasingly permissive social attitude to the visibility of sex. One aspect of this increased visibility is the growing awareness of the involvement of children in

⁴⁰ Similarly, Belgium authorities found that the rape, torture and murder of six girls by Marc Dutroux in 1995 and 1996 was, according to a Belgium parliamentary inquiry into the murders, 'part of a paedophile ring that had operated under the noses of incompetent and negligent police' (in Prenzler 2009b:48).

commercial sexual exploitation. This chapter began with an historical overview of childhood as a cultural and social construction in order to contextualise what is interesting about media representation of children and the sexual crimes committed against them. The discussion examined discourses around children's sexuality, and drew on the stereotype of Lolita to examine the enduring stereotype of at the idea of girls and young teenagers being seducers and the perpetrators of sexual crimes against children as acting within a normative, rather deviant, masculine role. While their abusers are regarded as pathetic or otherwise inadequate, this normalization of their actions has served to diminish the perceived criminality of their actions. However, this chapter has considered how this attitude is shifting.

Journalism has long played a role in the visibility of social problems and, just as importantly, media discourses have framed how we talk about these issues. News coverage of child sexual abuse, including court reporting of specific cases and inquiries into the policies and practices of child protection services more generally, has become a feature of contemporary news in Australia and elsewhere (Taylor and Ashford 2011). However, news stories about adults abusing young people in exchange for money and other favours are less prominent. The British cases described in this chapter are examples of how journalism can do more than represent the justice process that occurs in response to these crimes, but also expose failures of authorities and others to respond to these crimes and for raising awareness about children as victims, rather than willing participants in sex work (McAlinden 2013). However, news coverage about these matters was criticised and the news reports of these cases were also sites of contest over meaning, definitions and the legitimacy of actors, including journalists themselves. These contests over the news value of stories about abused children, and the right of journalists to call authorities to account for their actions, or inaction, suggest that public attitudes about these matters are shifting. Journalists, when covering crimes against children, have a choice. They can report in ways that perpetuate the historic binary of the

innocent victim/child as seducer and other assumptions and discourses that have contributed to the 'willful blindness' to children, or journalists can look for different ways to describe these crimes. This is nothing new. As Kitzinger observes (2001: 100) shifts in how journalists considered incest late last century was a 'prerequisite' such abuse shifting from being a shameful secret to a public issue that demanded visibility and discussion. More recently, Greer and McLaughlin (2012a) observe that news coverage of the Savile case generally framed the story as being one of 'institutional failure' rather than deviancy. News representation of Ireland's inquiry into the Catholic Church that was regarded as 'generally well done', 'absolutely necessary' and without which 'the impact of institutional and sexual abuse of children would never have received the public attention that, in truth and justice, it merited' (Auge et al. 2010:67).

This perspective is not solely one coming from media scholarship. Goddard (1996) credits Australian journalists for revealing the 'carelessness of child protection systems' in Australia and, writing on the interdependence of journalism and child protection advocacy, Goddard and Saunders (2001) acknowledge that while media's portrayal of child abuse and child protection can have negative consequences for children and their families:

Media coverage is vital if public concern for children is to remain on the political agenda, and if child protection services are to remain accountable. The challenge for those involved in child welfare and protection is to make greater efforts to understand media influences and to use the media constructively. (Goddard and Saunders 2001:1)

Producing news that gives visibility to what is hidden is a difficult undertaking when it involves victims of crime and other trauma, especially when the victims are children. As journalist Michael Shapiro observed:

To cover child welfare properly is to set aside your instinct as a journalist, the urge to find an overarching answer, and your instinct

as a person, the attempt to save the innocents, and to accept a more realistic goal – that of raising a series of increasingly difficult questions [that can] move public debate closer to the messy and individual realities of these families. (Shapiro 1996:47)

So, as well as the ethical need to produce news that does not frame victims to be responsible for their own abuse, journalists also have to ensure their work avoids slipping into sensationalist and simplistic coverage and, instead, provides the more socially useful task of pursuing institutional accountability and more equitable and effective child protection policies and practices (Mendes 2001).

Rather than regarding these crimes as sad tales of social and familial dysfunction, the journalists that pursued the stories in the British and Australian examples also found the opportunity to reveal not only political and institutional impropriety, but also cover-ups worthy of scandalous headlines. For instance Middleton et al. (2014b: 24), writing about The Australian Royal Commission into Institutional Responses to Child Sexual Abuse, observe the increasing awareness that these crimes are not only perpetrated by opportunistic individuals, but that their invisibility amounts to deliberate concealment:

While there are some who will consign accounts of politically connected organised abuse...to the category of ‘conspiracy theory’, the reality is that our world is being progressively acquainted with the fact that such examples are repeatedly surfacing. (2014:24)

As such, while child abuse appears to be becoming a contemporary staple ingredient in news coverage, its recurrence can be seen to be part of a wider shift in social, political and legal approaches to child abuse. While these news stories can be seen to contain elements of moral panic, as Jagannathan and Camasso (2011:2) note, ‘failures in decisions to protect children are inextricably bound up with failures to redress social outrage’. The willful blindness that has been turned to the child victims of the sexual opportunism of others is increasingly an outdated response to reports of

abuse. Emerging from the realisation that children cannot be responsible for their abuse, and that their abusers are more common than the occasional deviant, is a social shift towards demanding accountability for anyone who willfully ignores such crimes. The pervasiveness of that position is relatively new and for that reason, remains contested. How that contest plays out in newsrooms remains unclear and the conditions that provide journalists with the opportunity to expose what others wish to remain hidden is even less clear.

This chapter has contextualised the concept of childhood and current social interest and anxiety about paedophilia and, drawing on the discussion in Chapter Two about how media can both inform and amplify social anxieties, it has located the issue of child sexual abuse as a contemporary example of a debate that can be simultaneously viewed as containing both the elements of moral panic and opportunities for deliberation and social action. Having established the role of news as a vehicle for visibility and a conduit for public debate about child sexual abuse and exploitation, it is now necessary to consider these factors in relation to the news representation of criminal proceedings. Thus, the following chapter begins with a wide perspective of law and morality before focusing on the benefits and problems associated with news representation of legal proceedings and police work, and concludes with a discussion on how sexual crimes are represented in the news.

4. CRIME AND NEWS

4.1 Introduction

Asking how journalists can better report on criminal matters requires some understanding of the synergies between law and news media, such as the recognised place of the principle of open justice, but also the conflicts that can arise in this process, such as the publicity of material deemed to interfere with fair trials. The tension between the administration of law and the representation of this process by journalists is also a foundational area of criminological research. Media interest in crime and other legal issues is particularly intense around situations conspicuously involving issues of morality, so this chapter begins with an overview of the important differences between law and morality. This is followed by a discussion on the role news media organisations play in communicating the administration of justice and some of the issues around controlling media interest in crime. The chapter concludes with a discussion on the responsibilities of journalists reporting on sexual crimes.

4.2 The sociology of morality and the law

Crimes of a sexual nature are sites where the distinction between law and morality is particularly apparent – and contested. Therefore, any discussion about sexualised violence, public opinion, news and the law requires some discussion about the role of law in society and how it is not synonymous with morality. Early studies of ‘the law’ were largely dominated by legal practitioners and theorists focused primarily on legal doctrine, sometimes referred to as black-letter law, rather than broader socio-legal questions. But more recently, sociological approaches have come to investigate the law in terms of it being a system of organisations or institutions

which produce and administer the law within the broader complex of institutions that make up democratic society (Deflam 2008; Nelken 1984; Travers 1993). The sociology of law emerged in the twentieth century as part of a broader intellectual project, strongly influenced by Marxism and social constructionism which defined 'the social' as separate to the political and the economic interests in society (Banaker and Travers 2002). In this sense, the sociology of law is engaged with the questions raised in the preceding two chapters, such as how the structures of society can be viewed as temporal and subject to contest.

The works of sociologists Max Weber (1836–1897), Emile Durkheim (1858–1917) and Eugen Ehrlich (1862–1922) are seminal theories for contemporary sociological theories of law and their contribution will be briefly considered before turning to more contemporary questions in the sociology of law. Within a wide body of writing, much of which was published posthumously, Weber (1978) considered both the causal explanations and consequences of law as a driving social force and a key influence on the distribution of power. He regarded the legal system as a source of power and status in society, drawing attention to the tight control of the legal profession to defend this social and material position. As well as regarding law as an important social driver, Durkheim looked at law in relation to whether there were 'social facts' that informed law and found the analysis of law and morality to be inseparable (Cotterrell 1999; Durkheim 1973).

Building on foundations provided by the two earlier sociologists, Ehrlich (1936) argued in his *Fundamental Principles of the Sociology of Law* that society functions not only because people behave well but also because they are motivated by a desire to get along, which is separate to acting out of mindfulness of the law. These three theorists identified both the importance of law as a key social force that governs civil society and individual behaviour, but also located morality and other normative ideals that underlie social identity and behaviour that can be regarded as distinct from law. The most obvious of these is religious doctrine, but morality also extends

beyond religion to encompass forms of 'pluralistic, subjectivist morality' (Boutellier 1996:13). Although law can be contextualised as one of many social institutions, the absolute power in which it can assert authority sets it apart from other democratic institutions. Nevertheless, it must be possible to regard law as both the product of human reasoning with all the subjectivity and self-interest that comes with it, but also as a structure that defines orders and serves civic life.

Crime and morality, however inseparable, lie at the nexus of debates about whether law can be based on some sort of universal set of principles or if it can only be expected to reflect human reasoning (Anleu 2000; Travers 2009). While morality can be regarded as 'nothing but expressions of preference, attitude or feeling' (MacIntyre 1984:11–12), the sense of there being a universal morality also underpins notions of justice (Durkheim 1973; Habermas 2008). Two theorists are associated with this apparent schism that resulted in the Hart-Dworkin debate that epitomises the difficulty of equating law with morality (see Shapiro 2007). In short: Herbert Hart (1961:180) put forward a positivist position that law is only a human construction that makes 'moral obligation and duty ... the bedrock of social morality but they are not the whole'. In reply Ronald Dworkin (1967) contended that the canons of law and morality share a body of ideas including the concept of social morality which could be identified and used to determine legal doctrine. Claiming reason would be able to determine the 'right answer' to matters of law and morality led Dworkin, like Habermas, to run into the difficult question of distinguishing between determining what is universally true and that which merely represents the morality of any given time (Cotterell 2004).

The relativism of morality in relation to the law is most clearly viewed in the labelling of some people and actions as deviant. Deviance is a label used to sanction those who break the rules as a ritual of social control (Cohen 1972; Gusfield 1968). Defining what is deviant 'underwrites legislation, the criminal justice system, punishment and the exclusion of the offender and remains a central concern for

justice' (Wykes 2001:16). There are two key ways to approach criminal deviancy: through the structural-functionalist lens that views deviance as caused by objective factors, such as the psychology of criminality; or through a social constructionist lens that sees deviance as best viewed as a social construction in which what is a taboo or abhorrent in one historical period can be regarded as morally acceptable in another (Travers 2002:214-215). This latter perspective is reflected in the pejorative use of moral panic in public discourse as well as in research involving media, morality and law. It locates the expression of public outrage at crime, or other deviant acts, to be a display of people's reassertion of the collective sentiments around ideas of what is right and wrong and acceptable or intolerable. These displays of outrage over breaches of law and morality are suitable subjects for media and criminological research because such expressions can, at times paradoxically, appear as processes of democratic deliberation but also mechanisms for social control. This tension, and the contests involved, can be a site in which to examine the operation of power. There are many ways in which symbolic power is exercised in society, but in matters of law the exercise of power can literally deprive people of their liberty and even their lives. The work of Michel Foucault is central to considerations of deviancy as a site of protest against power. Foucault chose mental health institutions (1967), prisons (1977), and sexuality (1978) as sites to examine power, not from the point of view of authority, but from the perspective of those individuals and groups labeled as deviant and removed from society. Foucault (1982) explained that those labeled criminal, insane or sexually deviant are people whose dealings with power were not abstract, but as something real and experienced.⁴¹

Deviancy and crime remains a useful lens through which to view the complex processes by which society negotiates questions of morality and what is 'right'; it is

⁴¹ Flyvbjerg (1998:211) observes that the difference between Habermas and Foucault is that the former argued morality to be something that could be achieved through consensus and reasoning and the latter observed how morality is determined through conflict and contest.

also an area of civic life where both the exercise of power by the state towards the individual can be clearly observed. However, public debates about law and morality, such as those involving sexuality, marriage and drug use, are also sites where the boundaries between private and public, and individual freedom and social responsibility are contested. In this process, deviancy is sometimes celebrated, with the person or group labelled 'deviant' viewed more as 'folk hero' than 'folk devil'. Challenging society through deviancy is typified by acts of civil disobedience, where moral claims are used to justify breaking so-called unjust laws. In this sense, deviancy can also be seen as a site of contest resulting in the sometimes paradoxical situation of some laws being 'honoured as much in the breach as in the performance' (Gusfield 1967:177). Other deviant acts with no reference to moral agendas, but which are still subject to some social acceptance, include young people experimenting with drugs, promiscuity, and minor crimes, which are seen as behaviour that is tolerable in the young or even as rites of passage. This behaviour exists in a grey area where they are at once condoned and condemned. Media, including the news, is pivotal in this kind of representation of deviancy, which extends beyond what constitutes moral panic. The mediatised visibility of some crimes, and the ensuing public and institutional debates around that crime, can be seen as part of this deliberation about what is to be labeled deviant, immoral or illegal and how such actions should be treated in law and by society more generally. In such instances, there is public interest, in both senses of the term, in how the justice system treats those labeled as deviant. For that reason, trials and other court proceedings are open to the public. In an increasingly mediatised society, that public gallery is a virtual one.

4.3 Open Justice: The law, the public and journalists

Crime was an early staple of news reporting, providing audiences with drama as well as information and by the 1900s, the police and courts were a regular beat for

journalists (Chibnall 1977; Tunstall 1971). Broadly speaking, a fascination with crime, both real and fictional, continues to be at the heart of popular culture (Schlesinger and Tumber 1994). Crime remains a core interest to journalists. For example, Breit and Volcic (2007) studied *The Australian* newspaper and found legal stories made up between 22 to 35 per cent of content each day, comprising 42 per cent on one day, and these stories were predominately in the news section. The matters that make it to police and the court system consistently hold news value, and therefore commercial value, to news organisations. The questions are: why and to what effect?

The role of the journalism in shaping public attitudes towards crime and the justice system is well-researched (Boda and Szabó 2010). The idea of mass media contributing to moral panic, discussed in the previous chapter, is a case in point, but more recent research has added nuance to the question of the relationship between news, audiences, criminal justice, and outcomes in laws and policy. This work is a field in itself, variously described as news media criminology (Greer 2010a, 2010b), media criminology (Jewkes 2004), and newsmaking criminology (Barak 1988). Greer (2010a) suggests that although the different areas of the field are relatively well researched, the complex interaction between crime, justice and media is yet to be adequately explored and 'requires a renewed focus on interdisciplinarity' in the undertaking (2010a:21). This approach requires looking beyond the representation of crime in the news to consider the practices that lead to news content, including the power at play in the construction of news. As previously discussed, these practices include the professional practices of journalists and the communications strategies of those involved in the legal and political professions. To discuss the question of media representation of news it is important to consider the principle of open justice and the role journalism plays in the communication of law.

The oft-cited aphorism 'justice should not only be done, but should manifestly and undoubtedly be seen to be done' is attributed to Lord Hewart during a defamation trial in 1924 (Spigelman 2000a). The principle to which he was referring

is open justice, which has been a fundamental standard of the Common Law legal system since at least the sixteenth century and remains an important value in modern liberal democracies (Baylis 1991; Chesterman 1997; Kenyon 2006; Moran 2013). Its origins are obscure, although it is likely to have begun in the historical notion of a public occasion (Davis 2001; Spigelman 2000b). The ideal of a public court is historical and precedes modern mass media. As philosopher Jeremy Bentham (1825:67) asserted:

In the darkness of secrecy, sinister interest and evil in every shape have full swing...Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. (Bentham 1825:67)⁴²

However, the nature of who does the 'seeing' remains a difficult question. At the heart of criticisms about the role of news in open justice is the question of how criminal proceedings be publicised in a way that ensures justice is seen to be done, without doing further injury to the people before the courts (Davis 2001; Sellers 2008).

The accused in criminal proceedings sits at the incongruous junction of three principles of law: the principle of open justice, the presumption of innocence and the right to a fair trial. However, the rights of the accused are not well represented in news coverage of court proceedings (Howell-Collins 2012). Spencer (2012:145) notes that while it is in the name of a fair trial that the accused and even details about them are silenced by journalistic practice or suppression orders or other court directions, if 'one of the primary goals of the press is to give voice to the

⁴² Bentham (1825) also wrote about the case for privacy, for which he favoured a closed court for matters involving fathers and guardians 'who may have acted improperly towards the young person under his charge' to avoid 'a complete triumph for his young antagonist' and instead allow the judge to 'reprimand the father, without humiliating him' (1825:79–80).

voiceless...in the case of convicted criminals, this promise is not being kept'. Those arrested and named in the press also feel the injustice of this process, especially when charges are dropped or they are acquitted after they have been named and shamed in the court of public opinion (Davis 2001).

Contemporary news treatment of alleged criminals is likened to a modern version of putting an accused person in stocks and parading them through the village square, but it is questionable whether the task of shaming, no matter how cathartic, is a role for modern news media. Some would argue that shaming 'is a form of psychological pressure that is not compatible with the liberal conditions of western culture' (Boutellier 1996:18). However, this is contested. For instance, Australian law rarely acknowledges the punitive role that journalism plays in public shaming, but judges have reflected on its usefulness (Waller and Hess 2011). Braithwaite (1989), arguing that shaming is central to efforts to control crime, suggests there are two types of shaming levelled at criminals: disintegrative and integrative. The former serves to push offenders away from society and towards criminal behaviour, whereas the latter is 'powerful and bounded by ceremonies to reintegrate the offender back into the community of responsible citizens' (1989:4). Braithwaite (1989: 59) also calls for 'decoupling' shame from punishment when discussing deterrence and rejects the 'public visibility of the pillory' such as public executions and flogging. Kohm (2009:190) argues that shame is one emotion that is increasingly emerging in public discourse around crime as a rejection of the western tradition to minimise emotion in criminal law. Further, by affording little or no protection from the public gaze, the principle of open justice also acknowledges a crime is an abhorrent act against a community, not just an individual, group of individuals or company (Baylis 1991:184). For that reason, public shaming, visibility and the public interest are connected.

Espousing the principle of open justice on the grounds that it is 'in the public interest' runs up against the question of the legal definition of public interest.

Spigelman (2000b: 378) insists the term 'public interest' should not be understood in the 'immediate populist sense', but 'as a historical continuum; acknowledging debts to previous generations and obligations to future generations'. In this sense, the principle of public interest refers to the right of people to not only know about events and actions that may affect them or others, but to also make fair comment on them. The concept of the public interest engages in the tension of what the public has the right to know, and therefore includes the actions of all areas of democratic life. The public interest is said to be served through the mechanism of open justice, which ensures not only that the matters being discussed in the courtroom are made public, but that the processes of court are also public.

The role of publicity in justice is well documented and news coverage and public interest in a criminal case is said to contribute to judges being more inclined to ensure accountability in their judgments, witnesses being more likely to come forward with information, and criminal proceedings acting as a deterrent (Davis 2001; Spigelman 2000b). However, a more transparent court risks potentially undermining the authority and legitimacy of the court itself. Gleeson (2000:123–124) argues that open justice in contemporary news media conditions exposes judges to criticism 'in an age when attitudes towards authority are no longer deferential'. The journalistic gaze is one of visibility and exposure that can both reveal injustice as well as cause or perpetuate humiliation and suffering. For these reasons, the relationship between the institutions that administer justice, including the courts and police, and the institutions that publicise these matters is frequently uneasy because of the tension around controlling visibility.

4.4 Controlling interest in crime

Despite the logic behind open justice as a principle, and the opportunities that criminal cases present for social change, it risks understatement to say that the relationship between lawyers and journalists in Australia, and in many parts of the

world, can be fractious. Legal professionals often describe their daily working lives, and how journalists represent their work to the public, as 'parallel universes' (Lloyd 2005:209). Lawyers reportedly regard media representation as flawed by annoying inaccuracies as well as the more serious problem of distortion caused by news media (Breit 2011; Gies 2008). Alternatively, journalists argue that the police, courts and other areas of the justice system are frequently obstructionist when it comes to journalists' inquiries and, more generally, out of touch with the public sentiment (Breit and Volcic 2007:2). Each professional group grudgingly acknowledges the important roles the other play in society but neither entirely trusts the others actions or motives. This occurs despite news media, policing and the courts each depending on quality news coverage of justice to maintain and even restore, public trust in them as institutions (Anleu and Mack 2012). This is an important question because, as the Chief Justice of Western Australia, Wayne Martin (2009:9), observed: the principle of open justice is impeded by 'the practical obscurity of court proceedings, even to a person, or media representative, who is sitting in the courtroom'. If open justice is to be more than an ideal, the boundaries between journalistic practice and the legal field need to be addressed. A significant body of research examines the role of police public relations and subsequent news coverage (Johnston and McGovern 2013; Lee and McGovern 2012; Mawby 2010a; McGovern 2011; McGovern and Lee 2010). An emerging literature also considers communication between journalists and the courts (Ericson et al. 1989; Johnston 2008).

The vexed relationship between journalists and those working in the justice system, especially during news coverage of criminal matters, is a curiosity for media research because it appears, among other things, to be indicative of the low regard for the principle of open justice among some practitioners. It also hints at providing an explanation as to why news reporting of crime can become distorted and contentious. One explanation for the professional hostilities between journalists and those working in justice is that each group shares a professional objective in relation

to truth seeking and knowledge, but both have vastly different approaches to these objectives (Breit 2011; Gies 2008). These hostilities are further exacerbated by differences in approaches between police and the courts (Johnston and McGovern 2013). Further, those working in legal professions and news journalism work in parallel but seemingly inverse worlds: lawyers work over long time periods compared to journalists whose working lives are typically defined by demanding deadlines; the former actively work to protect privacy and values discretion, whereas the latter lauds visibility. The result of these different professional objectives explains the tension that can arise in the working relationship between these two professional communities. Such a tension suggests the need for some kind of mediating force. The rise of police media units indicates a possible way forward. Police, unlike the courts, in Australia have more actively adopted strategies to control their profile and visibility with both traditional and online media compared to the courts (Johnston and McGovern 2013: 1668).

Crime has long been a major news staple, and journalism's reliance on police as primary definers of crime news is well established (Chibnall 1977; Hall et al. 1978). The problem with police as a key source of crime news is that the journalist-police relationship becomes a symbiotic one that can lead to journalists not only being uncritical of police communication, but also uncritical of police involvement in crime (Freckleton 1988:78). The relationship between journalists and their sources in policing can also lead to unwelcome and damaging publicity. The rise of police media units now plays a key role in how crime news is framed in media and, in particular, how police and policing is represented (McGovern and Lee 2010). The increased control of police communications appears to have exacerbated the uncritical nature of news reporting of policing and also ameliorated the lack of control over media content.

In recent decades, changes in news room resourcing and an increase in police communications strategies have shifted the police communications strategies to one

of 'sophisticated media management' (McGovern and Lee 2010:447). One of the inherent problems with all media management, or spin, is that it can stop reporters from investigating claims and finding alternative perspectives: what Gratten (1998) calls 'lazy journalism' (1998:42). McGovern and Lee (2010:453) described the strategies deployed by the New South Wales Police media unit as 'taming' journalists. Strategies included rewarding journalists who did not challenge official messages with 'scoops' and also limiting what operational officers told the media units about incidents in which the police feature badly, so that it is more difficult for journalists to investigate negative police news.

The competition over access and control of court material and the excesses of control in police communication strategies resulting in journalists looking elsewhere for their news is evident during scandals and particularly the so-called media trial. In these cases, official sources typically lose control of the news agenda. The term 'media trial' describes 'situations where media not only report the evidence presented inside a court but actually shape that news with very particular sets of opinion' (Schwartz 2005:138–139).⁴³ During these events, journalists justify their actions and subsequent news coverage as being in the public interest, or representing public opinion (Greer and McLaughlin 2011). Of interest is the question of how journalists construct news stories to serve the public interest.

Journalists have been criticised for framing crime as isolated events or episodes rather than within more complex social contexts (Altheide 1987; Iyengar 1991). However, news coverage rarely relies on single frames and, as Maia (2009) argues, both episodic and thematic framing can operate simultaneously, such as when some sources move from retelling single accounts to commenting on general structural trends to explain events. Indeed, mediatised events that receive ongoing media

⁴³Prominent Australian media trials include the conviction of Lindy Chamberlain (Chesterman 1997) and more recently, the media interest in Schapelle Corby, an Australian woman convicted of drug trafficking on the Indonesian island of Bali, which 'played a very active role in setting agendas, shaping public opinion and encouraging strong reactions' (Schwartz 2005:145).

attention often contain multiple and competing discourses that inform and represent changes in perspectives (Gamson and Modigliani 1989; Pan and Kosicki 2001).

The politicisation of crime is a major feature in late twentieth century democracies (Greer and McLaughlin 2011; Tumber and Waisbord 2004). David Garland (2002:13) argues that police control over crime stories is increasingly challenged by 'a highly charged political discourse... so that every decision is taken in the glare of publicity and political contention and every mistake becomes a scandal' (Garland 2002:13). One of the problems with this shift is the risk that such reporting serves populist politics and affects political decision-making. Garland (2002:13), noting how populist discourses in news tend to elevate the authority of the public opinion over expert and professional expertise, 'has transformed the structure of relationships that connect the political process and the institutions of criminal justice' and resulted in legal matters being debated and decided in a political rather legal environment. So what factors contribute to some crimes and other legal matters attracting public interest to the extent that public discussions are drawn into a political rather than legal framework? More importantly, what actions can be taken to ensure that mediatised discourses around crime do not become embroiled in politicised reporting but rather remain as debates informed by legal principles rather than populism? While these questions apply to many areas of law, crimes of a sexual nature appear particularly susceptible to politicisation and moral panic.

4.5 Discussion: Sexual crimes and the news

The courtroom drama has many benefits. Colleen Davis (2001:101–2) describes a trip to court as akin to a free lunch for journalists who can report on people legally compelled to reveal the most intimate details of their professional and personal lives. Legally obliged to only report on what is said in court, journalists are also saved the time and expense of further fact hunting. The news values of sexual crimes in court contain several contemporary news values, including sex, violence, graphic

depictions of young women and reportable detective work (Naylor 2001). An interest in how courts treat sexual crimes is not limited to journalists and the public more generally. As Carol Smart argues:

How law deals with sexuality, and indeed the extent to which it is part of the historical and cultural construction of sexual behaviour... is still one of the most important sites of engagement and counter-discourse. (Smart 1999:391)

How can news coverage on crimes be socially useful without being sensationalist? Can detailed reportage of such crimes be anything but voyeuristic (Schlesinger and Tumber 1994:274)? As this chapter has discussed, journalism plays an important role in providing the public with the information needed to participate and trust in democratic life. The difficulty for journalists and news organisations is to provide news that is both in the public interest and also interesting to the public. That is, sensational without being sensationalist; salient, but not salacious. Journalists observe and report on various organisations and institutions in this capacity and the courts are no exception. Courts are places where the intricacies of events are described and can, in some cases, provide understanding and 'truth' about shocking events (Breit 2011) as well as offer insight about broader social issues (Greer 2010a).

This is not a recent development. George Bernard Shaw (1888), writing about the Jack the Ripper murders, observed that the murders of prostitutes in London ghettos not only sold newspapers, but also called attention to the living conditions of London's most desperately poor:

The Saturday Review was still frankly for hanging the appellants; and the Times denounced them as 'pests of society'...Now all is changed ... Whilst we conventional Social Democrats were wasting our time on education, agitation, and organisation, some independent genius has taken the matter in hand, and by simply murdering and disemboweling four women, converted the proprietary press to an inept sort of communism. (Shaw 1888)

As Shaw suggests, determining what aspect of reporting is salacious or chosen for higher purposes is not easily defined. For instance, a series of articles published in London's *Pall Mall Gazette* in 1885, titled the 'Maiden Tribute', was criticised for being sensationalist, but also credited for triggering the passage of the *Criminal Law Amendment Act 1885*, which increased the age of consent from 13 to 16 years of age in order to provide protection to poor girls targeted by men for sex (Gorham 1978). Historian Amanda Kaladelfos (2009, 2010) makes similar observations about news reporting of sexual crimes in Australia. She argues that coverage of the 1886 gang rape of sixteen-year-old Mary Jane Hicks by eleven men (Kaladelfos 2009) and the that news coverage of the 1921 rape and murder of a 12-year-old girl in Melbourne, known as the Gun Alley Murder (Kaladelfos 2010) challenged social attitudes regarding masculinity in the new nation. More recently, journalist Sally Loane (1997:59), writing about covering child abuse, defended the practice of selecting the most graphic, disturbing or 'head-line grabbing' details as a necessary practice if the reporter wants the coverage to be prominent enough to 'precipitate social change', even at the risk of being accused of beating up the story. Media representation of sexual crimes, then, is a composite of both salacious and alarming details and useful information.

The case-specific nature of criminal proceedings, court directions restricting what details can be reported in news, as well as journalism's news values and reluctance to engage with questions of underlying social and political conditions, all contribute to crime being told in certain ways (Bennett 2001). However, it is not only news practices that contribute to how a story is framed. Feminists have long contended that assumptions that court reporting is unbiased or neutral fails to recognise how law often continues to reflect a masculine perspective on matters of gender and sex, including rape, which in turn serves to contribute to news stories that perpetuate stereotypes and undermine efforts to change social attitudes (Benedict 1992; Chancer 2005; Cuklanz 1996). The problem of the treatment of

women involved in criminal proceedings is not just a question of media representation: even without journalists present, appearing before a court as the complainant to a rape charge has been likened to a second rape, where a person must not only relive the trauma of their experience, but is also likely to have to defend their fault and justify their actions during that experience (Cuklanz 1996; Martin and Powell 1994; Wykes 2001). In recent years, courts have responded to this problem by recognising that sexual crimes have a particular shame attached to them that prevents people coming forward (Johnson 1999; Jones et al. 2010). The news treatment of such crimes, then, is important because it has the potential to influence people's reluctance or willingness to testify against perpetrators.

How news organisations can ensure that justice is not only seen to be done, but that society benefits from news representation of crime, is not ignored by research. Cottle (2004, 2005) returned to the role of race in Britain in his study of the murder of Stephen Lawrence to examine this question. Others investigate news coverage of police shootings of the mentally ill (Clifford 2010) and child killers (Wardle 2006), while others have looked at the effect of celebrity on attitudes to rape (Knight et al. 2001; Wykes 2007). These studies invariably identify strengths and weaknesses in news coverage, rather than blanket condemnation of news reporting. In contrast, the criticism of news coverage in other disciplines is often presented as an inevitable result of the commercial imperatives of newsmaking. For instance, Bronwyn Naylor, writing about the publicity around sexual crimes notes:

It is clear that some media reporting poses a threat to the fair trial of the defendant. The commercial imperatives of the press will ensure that this will always be a closely-fought boundary. (Naylor 1994:501),

Contests at the boundaries of journalistic and judicial objectives should not be set in a binary of good and bad news coverage. As discussed earlier, binaries can also act as boundaries in which the power to define, in this case determining what constitutes good and bad journalism, is exercised as the power to control.

Newsmakers are by their nature 'rule breakers' (Simons 2007:252). When journalists appear too critical of authority, or inversely appear as a mouthpiece for the elite, there is a risk of public confidence declining, not only in news media, but also in public institutions generally (Cappella and Jamieson 1996). It is in the interest of open justice that there is a degree to which journalists remain independent from the judicial perspective. Rather than ask journalists to think and communicate more like lawyers, Breit (2011: xix) argues for the 'written and unwritten rules that underscore interaction and the personal codes' of both professions to be a good starting point towards untangling the seemingly incompatible objectives of journalism and law. Beverly McLachlin (2003:5-10), the current Chief Justice of the Supreme Court of Canada, acknowledges that 'the temptation to sensationalise and distort court proceedings cannot be ignored' but also emphasises that a good justice system can be found in balancing the tension between the principle of open justice and other values, such as the importance of accurate public information, privacy, and fair and impartial trials.

While it is perhaps mostly for the law and its administrators to determine the balance of privacy and visibility and the necessary conditions to ensure a fair trial, improving the accuracy of news reporting of crime and court proceedings should not be limited to questions of how journalists can improve their knowledge about the principles and administration of law. That is to say, the problem of accuracy in court reporting is not limited to journalists 'getting it wrong'. Gies and Mawby (2009) argue current debates about public confidence in the justice system overly focus on media, rather than on how communication strategies can improve public confidence. Accurate reporting requires not only a certain resourcefulness on the part of the journalists, but also a willingness of lawyers and court administrators to ensure a communication environment based on conveying and sharing information in a way that journalists can use. To begin a dialogue, both professions need to agree on the criteria of good reporting which, in all likelihood, would stumble on

questions of visibility and definitions of newsworthiness, but these are important questions that go beyond notions of taste and sensibility to the heart of how power is exercised and held to account.

This chapter has sought to better understand the role of journalists in the courtroom and the symbiotic, though tense relationship, between the administration of justice and news reporting. It discussed the sociological approach to law that regards the judiciary as one of several democratic institutions and located the role played by journalism in this process as both communicating, but also criticising, the practices of police and the courts. Within this role, media was found to have the potential to inform, but also distort, public understanding and faith in the systems of justice. However, it was found that the influence of public relations and organisational communication strategies on journalistic practice and content is less understood.

This discussion concludes the literature review which further defined the complexity of the issues and research problems in this case, especially the question of how media might report on child sexual abuse and exploitation in a way that does not perpetrate more harm to victims, cause unwarranted social anxiety, or damage public faith in the administration of law. The following chapters present the research design and analysis.

5. RESEARCH DESIGN

5.1 Introduction

News coverage, book-ended by the arrest of Terry Martin in September 2009 and his second trial in 2012, was remarkable for its intensity. Some reporting related to the crimes and criminal proceedings that followed, but the story also expanded into other areas of social and political life. Events and announcements cascaded and extraordinary claims that were reported as news or opinion contributed to controversy and outrage. In the process, some perspectives, issues and personalities became prominently associated with the crimes while others surfaced briefly before disappearing. Such visibility suggests struggles to control the definition and meaning making of reporting. As a result of such control, information was sometimes leaked or the actually blocking of information was reported as news itself. This contest for control is part of the process of newsmaking that reveals, amplifies, ignores and ultimately represents contests over truth (Zelizer 2004).⁴⁴ As the literature review has just discussed, there is a tendency in media criminology to focus on how news media distorts reality and this truism informs theories about social anxieties and moral panics, but also assumptions about journalism held by others, such as lawyers and policy professionals, who encounter journalists in their working lives (Greer 2010b; Howarth 2013). This cynicism can also be a distorting interpretation of a far more complex situation, so my study begins where Greer (2010b) suggests; by accepting that media distort crime, but then investigating the factors that contribute to that distortion. This chapter has two purposes. Firstly, it describes the research design by more fully describing the study's aims and key

⁴⁴Zelizer (2004) also notes that claims about objectivity and truth, which are significant standards in definitions of journalism, also put much of journalism studies at odds with cultural studies.

questions. Secondly, it determines the appropriate methodological approach selected to answer these questions. This chapter concludes by describing these approaches and their application.

5.2 Research aim

This case was chosen not only because it was controversial, but also because at times the coverage was incongruous. News organisations were criticised for contributing to the outrage and confusion by either reporting too much detail or not enough information and in this process news organisations were implicated in the struggle for definition, control and visibility. As discussed in Chapter One, the case presented a number of research problems, which raised questions about the role of news journalism as an intermediary between the public and public institutions, the extent to which journalism can take a single event, in this case a series of crimes, and link them to broader social questions, and the extent to which the communication strategies of sources influence news content. The aim of this study is to better understand the tensions that influence news coverage that not only informs public deliberation, but risks tipping coverage towards panic. This is a universal question for media research, but it is particularly relevant in debates around the rights of children and young people because of the current emphasis on institutional responses to the sexually exploitation of children in Australia, the United Kingdom and elsewhere.

The literature review identified that these questions inform a significant body of work that builds upon the proposition that newsmaking appears to distort public understanding of crime; ideas around moral panics are an example of the argument that a lot of news coverage of crime does not serve the public well. However, the sense-making and accountability work of journalism that informs some news coverage also inform people about social problems that they can act on. Indeed, liberal democratic society is predicated on the principle that citizens should be able

to inform and influence the processes and institutions that govern them. For this reason, news coverage, while at times problematic, was recognised for serving an important function in such societies. As such, my aim is to better understand and determine the point at which the sense-making work of reporters tips into the type of news coverage that leads to panic. This study investigates the factors that influence newsmaking, including journalistic practice, the communication strategies of news sources, and the organisational and structural limitations that affect how journalists and their sources communicate. In so doing, it not only investigates how this criminal matter was represented in news, and the myriad factors that contributed to the newsmaking process, but also seeks to understand how these influences contributed to the claims of conspiracy.

5.3 Research questions

The research problems outlined in the introduction are informed by the literature review and condensed into three research questions that guide the investigation. They cover representation, journalist-source relationships the question of where news reporting shifted from sense-making to politicisation and panic. These questions are described more fully below.

Q1: What were the features of the news representation of this case?

Reporting on this case was more than verbatim representation of court happenings and official announcements. As they reported, journalists raised questions, challenged official claims and reported accusations and rumours, as well as statements of denial and contest. News not only observed the administration of justice, but also engaged in a complex process of sense-making that at times appeared to draw on wider themes, such as ministerial incompetence and failures in law. The first task is to understand how news organisations represented these crimes

to their audiences. This is a question for each of the texts, but importantly also a question of how news coverage was constructed, in terms of being a continuous two-year narrative that drew on many voices, perspectives and topics that would become associated with crimes committed against the 12-year-old child. Such a question requires looking at how the news 'framed' the story. Framing, which will be discussed in more detail later in this chapter, describes the way in which events are selected by news organisations as 'newsworthy' and reported in a way that emphasises some perspectives, details and voices over others (Cottle 2000; Dahlgren 2005; de Vreese 2005; Silverstone 2007; Tankard 2008).

Sustained news coverage is a defining feature of reporting that turns into moral panics, crime waves and media trials. Therefore, understanding how this case turned into controversy requires understanding the narratives that perpetuated its coverage. This complex case, which was associated with a number of issues, could have taken many routes, but some issues, people and frames appeared to get more coverage than others. Understanding how this occurred requires observing *which* of these elements endured in the news, which did not appear or, if they did, which failed to continue, before asking other questions, such as *why*.

Q2: How did journalistic practice, the communications strategies of actors, and media laws contribute to news representation of this matter?

While analysing news content can provide considerable insight into *how* news was represented, it reveals little of the processes that inform this representation (Husting and Orr 2007). The personal and professional attitudes, ideologies and practices of journalists and their sources is recognised as significantly affecting news construction (Bennett et al. 1985; Cottle 2004; Dahlgren 2005; Schlesinger et al. 1991; Schlesinger and Tumber 1994). Newsmaking can be considered in terms of being a collaboration between journalists and other sources, all working as 'professional communicators' (Breit 2011) or in an 'interpretative community' (Zelizer 1993). This

perspective also extends the onus of providing socially useful media beyond journalistic practice to include the wider communication strategies of those who choose to engage, or not engage, with journalists. While the literature review identified a significant body of research into the role of public relations and communication by the police, less is known about how courts manage their communication operations (Ericson et al. 1989; Mawby 2010; Surette and Gardiner-Bess 2014). Understanding the structural limitations that affected the journalist-source relationship in this case presents an opportunity to understand the sometimes fractious relationship between police and court reporters and the legal professionals they encounter.

Shifting the onus of reporting from journalists to a wider range of communicators may not fully resolve the question of how news is constructed. Legal frameworks prohibiting the disclosure of information – and the interpretation and perception of these limitations – can also impact how journalists and sources communicate and what information can become news. Even a cursory reading of news coverage of this case shows that the reporting became politicised. News treatment of crime is frequently criticised for setting the agenda onto populist debates that result in poor policy outcomes, such as so-called quick-fixes and punitive reforms (Altheide 1997; Green 2009; Meyer 2007; Surette and Gardiner-Bess 2014). News media can either report official responses in a way that appeases criticisms or it can privilege perspectives that challenge the official line; it can either accept the explanation, or keep looking for an alternative account that goes beyond the limits of official reason-giving, to give ‘reasons that satisfy’ (Ettema 2007:145). The question remains as to what extent journalists and their organisations were undertaking legitimate accountability work or conducting a ‘trial by media’, fed by the personal vendettas, internecine conflicts and political agendas of the sources they were using (Greer and McLaughlin 2011, 2012a, 2012b; Kenyon 2006).

Understanding the practices that occur in the newsmaking process complements any analysis of representation. Providing some explanation as to why news texts appeared as they did prevents treating the newsmaking process as devoid of human subjectivity and other limitations. It allows news to be regarded as the result of complex and sometimes flawed decisions and processes, which opens the opportunity to consider more nuanced and constructive criticisms of the process and its products.

Q3: Can this case be described as a moral panic and, if so, at what point did coverage tip towards panic?

The third and final question has two parts. It first questions whether the news coverage and public reaction to the crimes and the official response to them constituted a moral panic. An initial reading found that news coverage contained both official statements made by Government, police and other officials and reports that included a sense of confusion and dissatisfaction about these official statements and outcomes. News coverage included the scandalous claim of there being an official cover-up. It is important to determine if news coverage was socially useful and informative, or a moral panic. News organisations were accused of producing reports that were perceived by some to be misinformed, salacious and serving certain agendas over others. Did news coverage distort public understanding of the complex social, political and legal circumstances that led to the crimes and their resolution in the courts? McNair (2006:206) asks: 'How does socially useful coverage of a problematic reality such as crime become a moral panic?'

The question of what constitutes and contributes to moral panics has been thoroughly interrogated, and possibly exhausted (Cottle 2006b; Goode 2000; Ungar 2001). Further, while panic as a genre has identifiable taxonomies, what is less understood is how panics can promote lasting social change (Cohen 2011; Critcher 2009; Goode and Ben-Yehuda 1994; Killias 2006; Lull and Hinerman 1997; Lumby

and Funnell 2011), or how they can be avoided altogether (Cavanagh 2007; McNair 2006). Any distinction between informative and inflammatory news would be subject to interpretation, but some determination of the point at which news shifts from being informative to causing panic would be useful. Greer (2010b) suggests that moral panic research needs to move beyond labelling concerns as moral panic and, instead, should investigate the factors that contribute to that genre of news. As such, this question does not seek to put to finer point on definitions of panic. Instead, drawing from McNair, the difference between socially useful news and panic can be regarded as occurring on a scale with these alternatives - the ideals of public interest journalism at one end and the disappointment of distortion and panics at the other. The challenge presented by this question lies in determining the point at which news coverage shifted towards becoming a panic and to understand what influenced this transition.

The first two research questions apply to the *what* and the *how* of news representation. These are interesting in themselves, particularly in relation to how public discourses are informed and represented by news. However, they do not necessarily identify the shift from news that informs to news that inflames. If conspiracy theories are an increasing feature in news media discourse (Byford 2011), then understanding the elements that shift a scandal to a conspiracy theory demands research attention. This final question seeks to not only understand the journalistic logic of pursuing the story, but also the influence of the communication strategies aimed at responding to media interest and controlling news flow. It seeks to tease out the elements in this case that constituted a shift in news reporting that led public deliberation to slip into panic. This research question is located in the well established framework of moral panic because the idea serves to encapsulate the idea of news practices distorting public understanding. As discussed in Chapter Two, moral panic is an all but exhausted concept, but in this case it serves as a useful lens in which to observe and better understand the role journalism played in a

complex criminal matter that resulted in a number of political decisions and policy outcomes.

5.4 Finding a suitable approach

Some studies begin by identifying gaps in present knowledge, other studies begin with real-life events that present questions; some phenomena are studied in their own right, while others are studied in order to build theory (Evans and Gruba 2002). This study began with the news coverage of a criminal matter that raised a number of questions about journalistic practice and the role of news in public deliberation. While it draws data from a specific geographic and temporal location, the question of how journalists engage with social problems and work within wider communication networks to inform and influence democratic deliberation is of global relevance. As a single case study it raised questions about journalistic practice that was relevant to not only the local context in which it occurred, but also provided a lens through which to observe mediatised public deliberation in a way that challenges some of the assumptions behind the ideas associated with moral panic and risk, which provides another perspective to how the role of media is understood within public debate.

Examining the confluence of news, public opinion and the law is an interdisciplinary undertaking that requires a multifaceted methodology that draws upon both quantitative and qualitative methods. This approach follows calls from a number of scholars (Allan 2004; Cottle 2000; Greer 2010a; Zelizer 2004) to develop scholarly frameworks that enable research to accommodate the complex interplay between journalists, their sources and the peculiarities of the socio-political contexts that inform journalistic practice. The strengths and weaknesses of choosing a case study and using a mixed methods approach will now be considered more fully.

5.4.1 *Choosing a Case Study*

Case studies have formed some of the seminal works of social sciences (Gerring and McDermott 2007). Case studies have informed influential ideas and theories, such as moral panic (Cohen 1972) and primary definers (Hall et al. 1978). Case studies can be limited to the analysis of news texts, such as Bird's (2005) work on media and HIV-positive women, or they can use different texts, such as Breit's (2008) comparison of a High Court of Australia decision with the national broadcaster's editorial policies. Despite this respectable track record, case studies are criticised for being biased in their selection, undisciplined in design, uncontrollable and thus producing conclusions that fail to provide causal explanations or replicable results (Denzin and Lincoln 2005; Elster 1989; Flyvbjerg 2001; Gerring 2007; Haas 2004; Yin 2009). Many of these criticisms can be leveled at qualitative research more generally and researchers can avoid many pitfalls by ensuring they clearly identify key issues and questions and deploy a suitable approach using well-selected methods (Heckenberg 2011). So what are the benefits of choosing a case study?

The case study is regarded as an ideal approach to understand real-life events that can also be used to develop theories (de Vreese 2005; Flyvbjerg 2006; Haas 2004; Stake 2005; Yin 2009). As German psychologist Hans Eysenck suggested:

Sometimes we simply have to keep our eyes open and look carefully at individual cases—not in the hope of proving anything, but rather in the hope of learning something! (Eysenck 1972:9 in Flyvbjerg 2006:224)

One criterion for case studies is that they are unusual enough to warrant investigation (Haas 2004:61). The crimes at the centre of this case are certainly extraordinary, but the amplification of community response to the point of public claims of corruption is also extraordinary.

Attempts to investigate the relationship between media representation, audience reception and policy outcomes may be formidable, but these questions are no less

important because they are difficult to quantify. The challenge for media scholarship is to understand these processes and to find instances of this occurring that are empirically researchable (Cottle 2006a; Schlesinger and Tumber 1994:11). The fact that these events occurred in a small community with a limited cast of actors and in a relatively concise time frame also provides this research with a conclusive study period of a little over two years and a finite cast of potential actors that influenced events. For these reasons, this case provides a rare opportunity to investigate the processes that inform mediatised debate about serious subjects. Curiosity also informed the research. At times, both events and their representation were confusing and unpredictable and appeared worthy of study themselves. As Bennett et al. (1985:68) observed: 'occasional cases of problematic news may be worth more of our serious attention than all the formula news that's fit to print'. A case study focusing on a high-profile crime requires a flexible, multi-faceted methodology. For this reason, this case study uses a mixed methods approach.

5.4.2 *Using a mixed methods approach*

Using a combination of methods is an orthodox methodological approach that can produce well-substantiated conclusions (Plano Clark et al. 2008; Lester 2007). Using different approaches, 'each with its strengths and weaknesses', is a typical characteristic of case study research (Gillham 2001:2). Any discussion of 'strengths and weaknesses' in the various choices of methods leads to a discussion on the merits and limitations of two main approaches to data⁴⁵ in media research and other social sciences: quantitative versus qualitative methods. The former is located in the assertion that knowledge can be objectively apprehensible and measured, the latter in the notion that data alone is not knowledge until it is interpreted (Lincoln and Gruba 2005; Travers 2001). The former values the observer's detachment from the

⁴⁵ The term 'data' here describes information collected using a set of values, which allows it to be measured or otherwise analyzed (Zeller 1980).

object of research, whereas the latter welcomes subjective perceptions inherent in human observation (Flick et al. 2004:9). Qualitative and quantitative approaches have benefits and disadvantages which makes combining them a legitimate and useful methodology.

Quantitative methods are a suite of approaches synonymous with statistics (Bauer 2000) within the positivist tradition that sought to distance social sciences from the 'speculation and personal commentary' associated with the arts (Deacon et al. 1999:3-4). In comparison, qualitative research acknowledges that the collection and interpretation of data is bound to the notion of context and human experience (Flick et al. 2004). It is worth noting that the description of these methods is more fluid than the debate about the merits of qualitative versus quantitative suggest (Hammersley 2008; Travers 2001).

One of the benefits of a mixed method approach is not only that it can draw on both empirically measurable and quantifiable data and the qualitative experiences of researchers and subjects, but it can also compare these findings in a process called 'triangulation'. Depending on the data involved, triangulation can be done in a number of ways to achieve various results. For instance Hammersley (2008) suggests that triangulation can be used to: fact-check the validity of an interpretation; collect multiple accounts from different sources with no attempt to ascertain a single reality; seek complementary information; and to not only find different information but to seek also a different worldview on the same object. Researchers should take care not to privilege one dataset or method over the other, such as using media texts as a baseline exploration before using interview data to 'confirm' what was determined in the initial analysis (Denzin and Lincoln 2005; Fürsich 2009). Instead, it is important to ensure that 'the traffic between ethnography and textual analysis moves in two directions' (Deacon et al. 1999:7). Just as the boundaries between qualitative and quantitative approaches are more fluid than they appear in some debates, triangulation itself is not a rigid process of comparison. As Richardson and

St Pierre (2005:963) suggest, the image of straight lines connecting the distinct points of a triangle, implied by the term triangulation, does not capture the process of cross-referencing, comparing and contrasting different data and a more useful image for the process might be 'crystallisation'.

5.5 Approach and application

This study uses three approaches: the first involves a frame analysis of the *Mercury* newspaper to determine how the various events were framed as problems; the second involves semi-structured interviews with professionals involved in this case; and the third draws upon other news reports and documents, such as press releases and government reports to support or corroborate the triangulation of data collected during the frame analysis and interviews. This research design follows Davis (2007) who argues that when dealing with small groups of professionals, the most realistic methods 'involve interviews, content analysis, participant observation, and the use of other survey data' (Davis 2007:185). In order to describe how these three approaches were applied, this section discusses each approach followed by its application in the study.

5.5.1 *Analysing media texts*

The first aim of this study is to answer *Q1: What were the features of the news representation of this case?* Answering this question involved examining the news texts relating to this case.

5.5.1.1 **Approach: Content analysis and frame analysis**

Content analysis is an orthodox social research method used in media analysis (Lester and Hutchins 2012; Krippendorff 2004). It is used to systematically identify and count repetitions of elements in the text, such as words, phrases or pictures

(Hayes and Krippendorff 2007). Content analysis is a quantitative method that is well regarded for providing replicability (de Vreese 2005). Some of the earliest works in content analysis include Galtung and Ruge's (1965) study of news values. Content analysis has been successfully applied to propaganda analysis (Lazarsfeld 1944; Tankard 2008), climate change debates (Boykoff and Boykoff 2007) and environmental protest (Lester 2010). The method sidesteps assumptions about what authors intended in their production, but also risks assuming 'something inherent in a text that is measurable without any interpretation' (Krippendorff 2004:22). Content analysis is widely regarded as a good starting point for media research, especially when combined with qualitative approaches to make up for its short-comings (Hansen et al. 1998 et al; Silverman 2006). These include being limited to the boundaries established by the categories set by the researcher (Deacon, et al. 2007), the difficulty of 'objectivity' in counting (Hansen et al. 1998:95), and being unable to detect what is omitted from the text (Gill 2000; Harcup and O'Neill 2001; Krippendorff 2004). These limitations led researchers to develop approaches aimed at better understanding how meaning and assumptions are embedded in texts (Gill 2000; Fairclough 1998).

In the shift from quantitative to qualitative approaches saw the emergence of critical discourse analysis, which is rooted in the critical movement of the 1960s but over time has evolved to become mainstream in sociology research (Travers 2001; van Dijk 1991). The critical movement questioned whether the worldviews of structuralism and positivism adequately addressed the complexity of human society, and critical discourse analysis emerged as a way to investigate the underlying ideologies in language that could show the causal link between discourses and power. Discourse can refer to the particular language associated with professional communities such as medicine or law (Foucault 1971; Wake and Malpas 2006:175) or, more broadly, as 'language in social use' of any group (Fiske 1996:3) or the way of talking about a particular worldview (Fairclough 2005; Hall 2001). These

opportunities for different voices to establish common understandings make critical discourse analysis useful for research into publics (Chouliaraki 2006). It can also be applied to assess how institutions 'think' (Bellier 2005). Importantly, critical discourse analysis can also chart how discourses can compete and change over time. For instance, Gamson and Modigliani (1989), in their analysis of mediatised public debate about nuclear technology, observed that even an apparently single discourse can have several distinct layers, such as: the professional discourse around the subject; the discourse of those directly involved; and challenger discourses. All of these provide for the kinds of contests that attracts news coverage. They described these times of conflict as 'critical discourse moments' where assumed knowledge is challenged and different perspectives are heard as people make sense of an issue. In these moments, journalism does not play a passive role (Gamson and Modigliani 1992b:68). An interest in critical discourse moments research endures. For instance, Sarah Cobb (1997), in her analysis of how women talk about violence in legal mediation, regards critical discourse moments as times when the legitimacy of speakers is contested. Anabela Carvalho (2005:6), in her analysis of mediatised debates about climate change, argues that critical discourse moments are particular events that not only challenge discursive positions but also 'may contribute to their further sedimentation'. Jessica Brown and Myra Ferree argue that critical discourse moments are attractive to researchers because:

In such periods, the nature of what everyone knows becomes widely established and remains part of the common store of understanding event after media attention moves on. (Brown and Ferree 2005:7-8)

The question remains as to how to study critical discourse moments when they involve a variety of different discourses and institutional settings over a long period. For this reason, and building from the observation of Gamson and Modigliani (1989) that news texts can contain multiple discourses and Altheide's (1997) observations of media 'problem framing', a frame analysis was selected to identify how journalists

framed the different events that make up this case. Frame analysis and discourse analysis are difficult concepts to separate, and framing as a term is used with 'significant inconsistency' in media studies (de Vresse 2005:51; Fowler 1991:43). All these phrases refer to the idea that prior knowledge, perspectives and assumptions inform how new information is understood. For this reason, frame analysis is a useful tool to identify the sense-making applied in newsmaking (Iyengar 1991; McCombs et al. 1997). Todd Gitlin's (1980) influential analysis of Vietnam protest movements found that news frames were 'composed of little tacit theories about what exists, what happens, and what matters' (1980:6). Framing also describes the internal frameworks of knowledge through which individuals correlate new knowledge and concepts with their own experiences (Entman 1993; Johnston 1985). Journalists cannot avoid framing because the process begins the moment journalists start to make sense of an event (Cappella and Jamieson 1997; Gitlin 1980; Silverstone 2007). Decades of media scholarship have shown how public opinion can be influenced by news framing (Chong and Druckman 2007; Gilovich 1981; Macrae et al. 1994). The success of any particular frame depends upon collaboration between journalists and their sources that results in a story being framed in a way that makes sense to audiences (de Vreese 2005; Gans 1980; Tuchman 1978). The access required to influence how journalists select news is a site of considerable power (Gitlin 1980; McCombs et al. 1997). The success of frames requires journalists to find sources who will 'sponsor' the frame by commenting (Gamson 1992a:26) and these frames need to be consistent and credible for the frame to endure (Benford and Snow 2000:619).

There are numerous approaches to frame analysis. To choose a suitable framing approach, it was useful to observe how the crimes and the official response to them in this case were represented in Tasmanian media as symptomatic or symbolic of wider political and social problems in the state rather than a single and unusual event. As discussed in Chapter Two, the idea of problem frames stems from work in the 1990s on social change and protest movements (Benford and Snow 2000;

Cavanagh 2007; Gamson 1992b). David Altheide's (1997, 2002a, 2002b) approach to problem frames was particularly useful. He identifies how news coverage frequently applies problem frames to an issue or event beginning with a 'general conclusion that something is wrong' which is then blamed on a 'familiar and uncontested' list of suspects, before finally prescribing a 'correction' or 'repair agent' (1997:655). Problem frames, while useful ways of initiating and promoting political responses to perceived problems, are also linked to moral panics (Altheide 1997, 2002b; Mejia et al. 2012).

5.5.1.2 Application: Content and frame analysis

The first task of any textual analysis is to select the texts. Tasmania has three tabloid daily papers, Hobart's *Mercury* and two regional papers in the north, the *Advocate* and the *Examiner*. The *Mercury* was owned by Davies Brothers Pty Ltd until 1988 when it was taken over by Rupert Murdoch's News Limited, a subsidiary of News Corporation. The national public broadcaster, the Australian Broadcasting Corporation, which is widely referred to as the ABC, has local radio stations, ABC Hobart and ABC Northern Tasmania, as well as Radio National, News Radio and Triple-J, that provide news bulletins and current affairs. The Special Broadcasting Service, or SBS, offering multilingual and multicultural programs also broadcasts on radio and television. There are two commercial television networks, Southern Cross and WIN that broadcast nightly news. At least 20 commercial and community radio stations broadcast around the state. Three mainland newspapers, *The Age*, *Sydney Morning Herald* and *The Australian*, have resident correspondents regularly reporting from Hobart and are widely available in Tasmania.

I chose to focus my textual analysis on the *Mercury's* coverage for two reasons. As I read these data, it became clear that the *Mercury* consistently covered the case in terms of number of articles and length of coverage, although *ABC Local* radio also covered the case on its hourly news bulletins and in lengthier forums. However,

collecting a complete record of texts from radio, like television, is difficult in terms of accessing full transcripts compared to collecting data from the electronic archives of newspapers (Chancer 2005; Hansen et al. 1998; Lester 2010). For the purposes of the textual analysis, I chose to analyse all the *Mercury* coverage from the time of Martin's arrest in late 2009 until Martin's appearance before Justice Blow in February 2012. Other news sites were also used as secondary data, which will be discussed later.

Singling out the *Mercury*, and its Sunday edition the *Sunday Tasmanian*, for textual analysis made sense – it is Hobart's only metropolitan paper and it has the highest circulation of the state's three dailies. In 2012, its average Monday to Saturday circulation was 40,638, increasing to 129,000 on Saturday and reaching 68 per cent of the greater Hobart region. The *Sunday Tasmanian* had a circulation of 51,617 (*Mercury* 2012). The *Mercury* was also a specific locus in this case: the newspaper published the classified advertisement for the girl and provided sustained news coverage of the case. The ABC also covered this case in its state radio and television news bulletins. Radio National also occasionally reported on the case on its current affairs programs. The television interview with the DPP on Stateline (Ward 1.10.2010) was a pivotal moment in coverage. While the content analysis uses the *Mercury's* coverage as a dataset, the ABC coverage is used to triangulate the findings of the overall study.

The first stage of analysis involved reading the hardcopy editions of the *Mercury* and looking at online coverage in a process I described as 'circling' the data to find my way in. Having decided to concentrate on the *Mercury's* coverage, I used the news archive *NewsBank* to search for articles that discussed the case, using phrases such as '12-year-old girl', 'sold for sex' and 'child prostitution' to ensure I had a complete dataset of the newspaper's coverage in which to begin 'the long preliminary soak' (Hall 1975: 15). This resulted in a diverse dataset comprising news reports, editorials, commentary and analysis, and letters-to-the-editor. Correspondence to the letters-to-the-editor pages was a rich trove of news content

about this subject. Analysis of media, including letters-to-the-editor and similar non-journalistic comment such as editorials, is an established practice (Ericson et al. 1989; Greer and McLaughlin 2012b; Hall et al. 1978; Perrin and Vaisey 2008; Pritchard and Berkowitz D 1991). I began by undertaking an in-depth content analysis of all the texts with the aim of counting the frequency of news relating to the case recorded each month over the study period. The data from this counting enabled me to observe that the *Mercury's* reporting occurred in 'peaks and troughs' in four distinct phases, which are described Chapter Seven.

This content analysis was undertaken while also reading and writing the literature review, so it enabled me to associate how the news coverage engaged with and reflected broader public discourses. This process follows Hansen et al. (1998) who note that anchoring content analysis in relation to the review of relevant literature ensures the researcher can build from comparison with other research. In this initial reading, it became apparent that the elements of framing, such as images or captions, would not reveal anything new; when the story involved the crime or a person to blame, it was front page; when it was less scandalous, it was placed further back in the paper. This finding was consistent with a large body of work that describes how news treats crimes in a way that sensationalises the crime and demonises the accused (Barak 1998; Howitt 1998; Jewkes 2004; Katz 1987; Meyers 1997; Schlesinger et al. 1991; Wykes 2001). However, the initial content analysis provided some interesting observations that informed the coding for this phase of the research. Deacon et al. (2007), recognising that the messages delivered by media are rarely simple, suggests that communications research requires 'a range of mental maps which can be entered at different points and navigated in a variety of ways' (1999:2). For this reason, I coded for five frames based on the field where the cause and/or remedies were situated. These were 'society', 'system', 'government', 'legal' and 'legal reform'. Framing was undertaken with the intention of minimising the subjectivity that can creep into assumptions about dominant frames (see Entman

1993). While I was unable to reduce my frame analysis to single word counting, that would have kept it at the quantitative end of the content analysis spectrum, I found that counting occurrences, without seeking to quantify or qualify the dominant frames, enabled me to minimise assuming what a reader was likely to infer from any given text. Working on the assumption that dominant frames would emerge from their continued appearance in coverage, I plotted the recurrence of the problem frames to identify which frames recurred through news coverage throughout the study period. These ‘problem’ frames were counted in all the *Mercury* articles. The results of this analysis are described and discussed in Chapter Seven.

5.5.2 *Interviewing as a research method*

The textual analysis identified how the case was represented, but raised many questions that any analysis of the text alone could not answer. These questions could only be answered by asking the journalists, lawyers and actors associated with the case in the news. As Cottle observes:

Sociological preoccupation with the mobilisation of strategic and definitional power, the empirical investigation of the interactions between news producers and sources, and the political contests and contingencies informing processes of news entry, are all vital components for any attempt to understand how social issues and interest find news representation. (Cottle 2000:442)

As such, my research design needed to incorporate interviews with journalists, their sources and other people who became actors in this case. As noted in the introduction to this study, I did not attempt to interview the victim, the accused or their representatives.

5.5.2.1 Approach: Semi-structured interviews

Understanding the professional assumptions, logics and practices of the people and institutions that influence news content is an important part of understanding the role of news in civil society (Philo 2007; Schlesinger 1978). One way to learn about these processes is to interview the people involved (Davis 2006). However, the interview process can be criticised for being a record of an individual's subjective response to questions, framed by the subjectivity of the researcher rather than anything empirically useful (Flick et al. 2004). This awareness that any question and its answers are subjective should not stop a researcher putting questions to individuals that cannot be gleaned from other sources (Lindlof and Taylor 2011). Instead of being undertaken in the naïve belief that there is a singular truth that need only be revealed through careful questioning, interviews can be guided by the principle social knowledge is constructed through many encounters with people, rather than any singular interaction (Deacon et al. 2007; Richards 2011). Interviewing has contributed to important revelations about the professional communication strategies of those engaged in social change campaigns, environmental protest and other mediatised conflict (Atton and Wickenden 2005; Gamson and Wolfsfeld 1993; Gitlin 1980; Lester 2007; van Zoonen 1992). Interviews can also reduce the reliance on official documents (Lindlof and Taylor 2011) and the process of triangulating data from interviews with other data, can also 'highlight areas of overlap or contradiction between publicly circulated discourses and privately enacted reception practices' (Moore 2000:90).

There are a number of different interviewing techniques that can be used in empirical research. Hammersley and Atkinson (2007:3) divide the research interview process into three phases: 'finding out how these people view the situations they face, how they regard one another and also how they see themselves'. Kvale (1996:4) describes the interviewer as either a 'miner' or a 'traveller'; the former seeking what is buried, digging beneath conscious experiences to unearth truths and unknown

nuggets of fact and the latter as someone who is conversationally wondering with the interviewee in order to understand the perspectives of the other's worldview. More specifically, interviews can be open, such as a conversation, or structured, such as a set of specific questions asked in the same context in each of the interviews. The hybrid of these is the semi-structured interview, which combines pre-determined questions to enable a degree of structure, but also allows the interviewee to be more relaxed in how they answer the questions and allows for unexpected knowledge and perspectives to be voiced (Klocke and McDevitt 2013).

5.5.2.2 Application: Interviewing the actors

Interviewees were selected using 'judgmental sampling' based on their involvement in the case (Robson 2002:265). I approached journalists who reported on events, correspondents to opinion pages or letters-to-the-editor pages, and sources that were named in news reports. I approached about 30 Tasmanian journalists, including reporters, chiefs of staff and editors, from the *Mercury*, *ABC Local Radio*, the *Examiner* and *Tasmanian Times* via email, identifying myself and my research and asking if they would like to be interviewed about their involvement in reporting the case.⁴⁶ I received permission to interview 10 journalists. All of the journalists requested anonymity except one, Lindsay Tuffin, whose role as founder and editor in the weblog *Tasmanian Times* made it impossible to de-identify him from his comments.

I contacted by email 16 others who were either personally mentioned, or work in an organisation that was mentioned, in news coverage of this case. Ten agreed to be interviewed. The accessibility of the interviewees varied, but problems with the time-poorness of busy journalists and other professionals, which can affect research, was not a notable problem (Richards 1996; 2011). I had a strong response from lawyers, both in their willingness to speak with me and the extent to which they

⁴⁶ As per the requirements of the Social Sciences Human Research Ethics Committee (HREC), University of Tasmania.

spoke, which supports Smith and Attwood's (2011) observation that legally trained people are by definition, university educated and thus more acquainted with academic research. I would also add that they appeared more confident of being able to keep within the legal boundaries of what could be publicly said during the interview. The sensitivity of the material was the main challenge in the interviews. The legal and ethical issues associated with commenting on an ongoing legal matter were often cited by those who declined to participate in the study. As Odendahl and Shaw (2002) note in their research on interviewing elites, confidentiality was paramount for many who I approached. This insistence on being de-identified was difficult when these people are working in the professional communities that occur in small cities such as Hobart. To address this problem I have described interviewees in very generic terms: 'journalist' to describe reporters, editors or other news professionals; 'lawyer' to describe anyone involved in the case as a legally trained professional working within the legal system; and 'actor' as a miscellany to describe others who were involved in the case and who contributed to news content as a source. All of these journalists, lawyers and actors are de-identified in the study to ensure their names, roles and places of work are not recognised. To prevent a reader connecting different quotes to form some sort of narrative to identify them, the interviewees are only identified by their group and the year they were interviewed. A few of these lawyers and other actors did agree to be named because their comments were so specific to their unique roles that the quotes would identify them. These interviewees were the Director of Public Prosecutions, Tim Ellis; Tasmania Police Association president Randolph Wierenga, and Tasmania Police communications officer Jodi De Cesare.

As a journalist with at least 10 years' experience, I was comfortable in the interview setting and was familiar with the artificial arrangement of being the one to ask the questions, which always prevents an interview from being a conversation (Malcolm 1990). I anticipated being too sympathetic to the accounts of journalists

compared with other interviewees, but found that my experience enabled me to avoid making assumptions about what journalists should ideally do and instead enabled me to tease out the limits and logics that informed their practice. Several interviewees appeared enthusiastic about the opportunity to participate in the study, but were concerned about the sensitivity of the case. My journalistic experience also helped me interpret their concern as being cautious of the 'gotcha': that entrapment of logic that can sting a person being interviewed by journalists. I found myself frequently reassuring interviewees that I could not 'trap' them into saying, admitting or revealing anything they would later regret, because the transcripts that I was obliged to send them would enable them to retract anything they regretted saying. The offer of a transcript to redact is a recognised method in interviews that can reassure both interviewees and interviewers (Richards 2011). In matters involving professional practice and matters of law, I would argue that the opportunity to retract appeared to encourage the interviewees to speak candidly and, because this case involved complex legal details and sensitive material, I found it reassuring to know that interviewees had read and considered the content of the interviews.

I transcribed the interviews myself and although the process was time-consuming, it provided a degree of immersion in the data. I did not include the verbatim 'ums and errs' typical of normal speech. Transgressions from the line of questioning were summarised in parenthesis, such as '[brief discussion about previous employment]'. On occasion, broken sentences were 'cleaned up' with utmost caution taken to convey their intended meaning. Kvale (1996) suggests this process is sometimes desirable to not offend people who can be 'shocked' by how 'incoherent and confused' spoken words can appear in the written form (1996:172). One respondent, an experienced lawyer and articulate speaker, requested that I transcribe our interview in a way that 'does not make me look like an idiot'. These transcripts were all returned to the interviewees for corrections, but very few changes were made.

Three participants withdrew from the process after I sent them the transcript of our interview for consideration. All cited having ethical issues with talking about their workplace. One explained their withdrawal as a result of failing get permission from their employer before talking with me, as per their organisations requirements, and two expressed concern that their comments would potentially affect their organisation and/or the other people they worked with. These withdrawals were disappointing, but in each case I could not determine that anything I had said or done had contributed to their change of heart. Instead, their withdrawal served as a salient reminder of the sensitivity of this investigation to journalists and other professionals in Tasmania.

5.5.3 Documents and other resources

5.5.3.1 Approach: Documents and other resources

As discussed earlier, the *Mercury* coverage was analysed in the content and framing analysis (described in Chapter Seven). However, other news sources and publicly available texts were used to triangulate these findings in order to clarify events, verify claims, or provide the necessary contextualisation for what appeared in news.

5.5.3.2 Application: Documents and other resources

Court transcripts

I unsuccessfully applied to the Supreme Court to be able to see a transcript of the trial in *Tasmania v Martin*. However, the Comments on Passing Sentence in the relevant cases are on the public record and therefore were available (see Appendix Three).

Direct observation

There were a number of opportunities, namely the trials and court appearances, in which some observation was exercised. I attended a number of court sessions in relation to this case, including the sentencing hearing of Gary Devine in March 2010, two hearings before Justice David Porter regarding the admissibility of evidence in 2011, Martin's sentencing in December 2011, and his sentencing hearing in February 2012, which included witnessing the assault on him in St David's Park as he walked away from court.. These opportunities to observe events provided me with some sense of the legal procedures involved in this case, but this direct observation was unsystematic and therefore not suitable to be incorporated into the study. However observations from this perspective informed other research methods, including some of the questions in the interviews, as well as providing description.

Other news media

Other Tasmanian media and mainland media organisations were searched in relation to the crime, to find details that were not mentioned in the *Mercury's* reporting. Online transcripts of *ABC Local* radio, *Radio National* (ABC's national radio station) and the state's northern daily paper the *Examiner* were also used.

Blogs, Facebook and other online sources

Regular online searches of social media, blogs, Facebook and Twitter were undertaken, but this case did not notably feature in online forums beyond sites that re-published items from news media. The exception to this observation is the *Tasmanian Times* website (2012) which carried a number of items, both re-publishing news stories as well publishing original material from contributors to the site.

Parliament records

The Parliament of Tasmania, like parliaments throughout the Commonwealth, publishes edited transcripts of parliamentary debates collectively known as

Hansard. Tasmania's Hansard did not officially commence until 1979 and has been available online since 1996 (Parliament of Tasmania 2014a). The Tasmanian Hansard database (Parliament of Tasmania 2014b) was searched using the terms '12-year-old', 'prostitution' and 'DPP' between November 2009 and September 2013.

Reports

Several state organisations were mentioned in news media and interviews in relation to the case, including Tasmania Police, the Office of the DPP, the Tasmanian Ombudsman and the Commissioner for Children as well as non-government organisations. The websites of these bodies were searched to find reports, annual reports, press releases and other documents and, as with the Hansard search noted above, were searched for references to the case. This information was used to identify events and perspectives not reported by news media.

6. SETTING THE SCENE

6.1 Introduction

To understand the public reaction and politicisation of this case, it is necessary to locate the socio-political context in which they occurred, as well as the established public and media discourses in Tasmania at the time. Context is important: crime does not occur in a vacuum, but exists within specific social and geographic contexts (Brantingham and Brantingham 1993; Killias 2006). Journalistic practice and news coverage, especially in political life, ‘depends on the rules of the political game at a given place and time’ (Schudson 2004:159) and the administration of law occurs within the context of the society from which it stems (Durkheim 1973). Finally, responses to crimes vary depending on the social, legal and political context in which they occur (Easteal 1998). Studies on crime coverage tend ‘to gloss over the moderating effects of the domestic contexts of media reception’ and rarely address ‘the significance of place context in the interpretation of crime imagery’ (Banks 2005:169–170). While generalisations and theories can be extrapolated from single cases, which as the previous chapter argued makes them important areas for study, it remains necessary to locate them within their social, legal and political contexts. This chapter describes the Tasmanian media discourses around political and institutional propriety in 2009, before explaining the controversy around the state’s sex industry laws that were also under review. It concludes by drawing on the discussion about the universal tension between the judiciary and media in Chapter Four, to provide some description of the relationship between Tasmanian news organisations and the state’s judiciary.

6.2 Funds in the freezer and other scandals

To understand the outrage associated with this case, it is important to consider the political mood in Tasmania when Martin was arrested. Tasmania is an island and the smallest state in Australia with a population of about 500,000. As the country's second oldest city, its capital, Hobart, shows its age with Georgian architecture and a Parliament House built of sandstone that overlooks a working port. When Martin was arrested in 2009, he was associated with the growing sense of impatience and distrust being directed at the Labor Government that, after more than a decade in power, was losing support. The suspicion some journalists and members of the public held for the circumstances around Martin's arrest is best explained within the context of the debates about political impropriety occurring at the time.

For many in Tasmania, Edmund Rouse is synonymous with corruption. In 1989 the Tasmanian Liberal Party, led by Robin Gray, lost majority government by one seat. Rouse, then a chairman of both media company ENT Ltd and Gunns Kilndried Timber Industries Ltd, attempted to bribe Labor parliamentarian Jim Cox to cross the floor to make up numbers for majority government. Rouse offered Cox \$10,000 from an ENT contingency fund and a further \$100,000 from a family money deposit at Gunns. Cox alerted Tasmania Police and Rouse was jailed for three years. ENT's managing director David McQuestin pleaded guilty to concealing and destroying evidence and escaped conviction. The 1991 Commission of Inquiry into the bribery attempt concluded that Premier Gray had also acted improperly (see Tanner 1995). In 2002, chief executive John Gay, who had steered the company through the Rouse scandal and inquiry, became executive chairman of Gunns, joined by McQuestin and Gray as directors (Baxter and Browne 2009). The following year it was revealed that the timber company was in negotiations with the Government to build a pulp mill in the state's north. The mill became mired in controversy as various individuals and groups challenged the environmental, social and financial feasibility of the venture. In 2007, the Lennon Government introduced legislation to 'fast track' the approval of

the mill, which prompted Labor backbencher Terry Martin to cross the floor in protest, but the legislation passed. The Gunns' pulp mill went on to be associated with the tabling in the Tasmanian Parliament of a shredded letter joined by sticky tape as proof of government interference in the appointment of a magistrate (Baxter and Browne 2009).⁴⁷ Nicknamed 'Shreddergate', the aborted appointment resulted in two parliamentary inquiries, on both of which Martin sat; one looked at the processes of senior government appointments (Parliament of Tasmania 2011), and the other at whether existing state bodies, including Tasmania Police, had the capacity to conduct independent investigations and which recommended Tasmania needed an independent statutory integrity body (Parliament of Tasmania 2009b).

Other examples of alleged corruption include criticisms of the transparency of Tasmania Police investigations and policing generally, following inquiries and investigations into incidents include the 1991 shooting of Vietnam veteran Joe Gilewicz and the 1994 allegations of drugs, race-fixing and murder made against two unnamed senior officers. The 1991 shooting of Gilewicz by Tasmanian Police Special Operations Group was subject to an official inquiry after journalist Paul Tapp claimed that senior police had covered up evidence (Tierney 29.2.2000). The 2000 Gilewicz Royal Commission concluded the shooting was justified, but that police 'had impeded and frustrated the inquest investigation' (Dally 26.10.2000). The decision not to prosecute police criticised in the Royal Commission reportedly 'left the public suspicious of internal inquiries' (Pongratz 2.8.2003). The 1994 allegations of criminal activity involving two unnamed senior officers also resulted in an internal police investigation. The allegations were made after then Assistant Police Commissioner Richard Chugg secretly tapped then Deputy Police Commissioner

⁴⁷ In 2013, Gay was convicted of insider trading for profiting nearly \$1million from selling 3.4 million Gunn's shares shortly before leaving the company in 2009 (*ABC News* 25.8.2013). He was fined \$50,000 and, at the time of writing, the Commonwealth Director of Public Prosecutions was lodging a pecuniary penalty order to compel Gay to pay money for the benefits derived from criminal activity (*ABC News* 18.3.2014).

Richard McCreadie's telephone. The subsequent inquiry found no evidence to support the claims against McCreadie. Chugg eventually quit the police force and McCreadie went on to become Police Commissioner in 1996 (Pongratz 2.8.2003).

Richard McCreadie retired from the police force in March 2008, but was temporarily reinstated as Commissioner in October that same year when his successor, Commissioner Jack Johnston, was suspended while facing criminal charges for disclosing official secrets. The DPP, Tim Ellis, alleged that Johnston had broken the law by disclosing to Premier Paul Lennon and Police Minister Jim Cox details of an investigation into allegations that a prominent lawyer was promised the job of solicitor-general in return for acting pro bono for former deputy premier Bryan Green who was facing court over his involvement in the scandalous Tasmanian Compliance Corporation.⁵⁰ Supreme Court judge Peter Evans ruled that Johnston had the discretion to determine how much he disclosed to the politicians and granted a stay on the prosecution as an abuse of process, concluding it was 'doomed to fail' (Denholm 12.12.2009). This decision was controversially challenged by the DPP who advised the Government that appointing McCreadie was 'inappropriate' because of the 'close links' between the Premier David Bartlett, Johnston and McCreadie (Stedman and Neales 22.10.2008).

These scandals contributed to a sense that there were at least questions around the processes of governance. A feature of this debate about corruption and accountability in Tasmania was the perception that whistleblowers were treated poorly by Government, the bureaucracy and the law. In Tasmania, the *Public Interest Disclosures Act 2002 (Tas)* empowered public officers to disclose suspected improper conduct and is part of the legislative reform that saw the passage of the *Right to Information Act 2009*. The relatively recent legislation did not allay concerns that

⁵⁰ Green faced accusations that he improperly authorised deals that favoured two friends involved in the Tasmanian Compliance Corporation. He faced two Supreme Court trials, but in both juries were unable to reach a verdict and the Crown case against him was abandoned (Neales 11.4.2009).

public servants who report wrong-doing were treated poorly. By 2009, several public servants were synonymous with the harsh treatment of whistleblowers. These included Nigel Burch, who released the shredded documents central to the shreddergate scandal; scientist Warwick Raverty, who criticised the mill's environmental credentials; and Julian Green, the chairman of the planning panel that assessed the mill (see Melville 2007). Whistleblowing is a typical trigger for scandal and not necessarily controlled by journalists (Liebes and Blum-Kulka 2004).

The problem of corruption is not unique to Tasmania, but the state's small community makes it particularly susceptible to cozy relationships. As historian Stefan Petrow (2005:87) notes: 'close relations between government and big business or other sectional interests will always provide opportunities for corruption in the insular world of Tasmanian politics and, incompetence apart, will always be hard to prove'. Of particular interest to this case is the question of police corruption. Tim Prenzler (2009a) argues policing in Australia has a long history of organised protection rackets involving gambling, prostitution and alcohol. This corruption has led to two significant inquiries into the relationship between police, politicians and criminal activity: the Fitzgerald Inquiry in Queensland that ran from 1987–1989 and the Wood Commission into New South Wales Police that ran from 1994–1997. Both inquiries included findings about police involvement in illegal prostitution and drugs.⁵² The latter found that although corruption was not particularly organised, it was 'serious', 'widespread', 'long-standing' and 'systematic and entrenched' (Wood 1997 in Prenzler 2009b:45). It is important here to note that policing in itself is not intrinsically corrupt, but rather as Prenzler (2009b) argues, it 'is a very high-risk occupation for misconduct' (2009b:51).

⁵² The Wood Royal Commission also investigated an alleged paedophile group that operated around Tony Bevan, a former Lord Mayor of Wollongong, after NSW parliamentarian Deirdre Grisovin, using parliamentary privilege, named another former Wollongong Lord Mayor and NSW parliamentarian Frank Arkell as one of the group (Middleton et al. 2014b).

Police accountability in Tasmania, as it is in many other jurisdictions, is bedeviled by the question of how police can be independent from political interference, but still be accountable (den Heyer and Beckley 2013). Prior to the establishment of the Tasmanian Integrity Commission, the only independent body with jurisdiction to review the activities of Tasmania Police and its officers was the Tasmanian Ombudsman and its remit to investigate was confined to the administrative actions of Police, but not investigations (Tasmanian Ombudsman 2010:14). The Tasmanian parliamentary review into ethical conduct that preceded the formation of the Integrity Commission found that the relevant sections of the *Police Service Act 2003* were:

Ambiguous and that the divergence of opinion in the interpretation of such section leads to the detrimental perception that operational matters, including criminal investigations, may be directly influenced by members of the Executive. (Parliament of Tasmania 2009b:7)

The need for Tasmania to have an independent statutory body was not unanimously supported. For instance, then Attorney General argued existing mechanisms were enough to investigate allegations of corruption (Stedman 9.10.2008). An editorial (*Mercury* 10.10.2008) shows support for this stance by implying that perceived problems in Tasmania were a matter of incompetence rather than corruption:

It is stirring stuff but although ineptitude and even dishonesty are all too obvious in Tasmanian politics, there is no evidence of corruption in the sense of money changing hands for favours, despite the many accusations that are bandied about so casually. Nor is there evidence of systemic police corruption. (*Mercury* 10.10.2008)

The formation of the Integrity Commission in 2010 did not resolve concern about accountability in policing. In 2011, Commissioner, Murray Kellam, told the *Mercury*:

The Commission has not been granted access by Tasmania Police to its information systems to the extent that the Commission considers is required for it to properly carry out its functions. (Killick 28.10.2011)

This disjuncture between the impropriety, incompetence and corruption requires further clarification. Defining corruption as being more complex than the exchange of money for political or economic favour is necessary (Beresford 2010; Brown and Head 2004; Prenzler 2009b). Beresford (2010:210) suggests the term 'institutional corruption' usefully provides for behaviour that brings political and professional, rather than personal, advantage and which leads to an 'abuse of the processes of decision making', including processes of accountability. Despite being the major form of corruption in Australia, Beresford (2010) says there is little scholarly research into its causes, such as the roles played by the relationship between business and the executive or the personalities of those involved. What is important about Beresford's definition is that institutional corruption does not require bribery or other conspicuous actions, but can include backroom deals that, while not including the exchange of money or similar paybacks, nevertheless benefit the careers and interests of those involved. Damningly, Beresford (2010:223) argues that: this form of institutional corruption is a key feature of Tasmania's political and economic landscape; that cronyism between corporate and executive powers is rife; the personalities involved well-known; and the extent of the cronyism and institutional corruption in the state, at times, 'bear close similarities' to the conditions in Western Australia under Premier Brian Burke that led to a Royal Commission into WA Inc. Prenzler (2009b) argues that the definition of police corruption should also not be limited to the taking of bribes and graft, what he calls classic corruption, but should also include 'unprofessional conduct', such as inaction to calls for assistance based on racial or sexual discrimination (2009b:50). The treatment of whistleblowers by those in a position to benefit from their silencing is also a significant issue because

mistreatment of whistleblowers is most likely to come from management (Brown and Latimer 2011:151).

Another way to consider these questions of integrity, ethics, probity and the grey areas around corruption is to consider what checks and balances are put in place to ensure the best system. This was raised by philosopher Jeff Malpas during the Tasmanian parliamentary inquiry into ethical conduct, who suggested that these complex questions needed to be addressed at structural, behavioral and cultural levels:

The structural level relates to the processes, procedures and formal lines of communication within an organisation, in this case, the system of government. The behavioral level relates to the character of individuals within the system. Finally, the cultural level, which relates to sets of behaviours that are promulgated within organisations that are exemplified by leading figures within the organisation and upon which expectations on the part of individuals within the organisation and within the wider community are formed. (Parliament of Tasmania 2009b:25)

The perceived lack of transparency in Tasmanian governance became a frequent subject in media discourses about the state which culminated in calls for an Integrity Commission, which gained momentum during the debate over the Gunns pulp mill (Bibby 2013). In 2008, hundreds in a public meeting heard that 'Tasmanian has a culture of coziness and everyone is in bed with everyone, doing deals' (Duncan 23.4.2008). In July 2009, the Joint Select Committee on Ethical Conduct, a committee on which Terry Martin sat, tabled recommendations for a Tasmanian Integrity Commission (Stedman 24.7.2009). A few months later, as preparations for an Integrity Commission were under way and the Parliamentary Inquiry into Executive Appointments was seeking to impanel former Police Commissioner Richard McCreadie to give evidence, Terry Martin was arrested. As such, Martin's name was already part of the media discourses around the question of political impropriety in

the state. His arrest was therefore linked to the government's treatment of other critics (Nicklason 2010) and Martin's absence from the Tasmanian Parliament at a time of such scrutiny was noted by media (eg. Neales 10.11.2009). While a crime involving a politician was always going to attract news interest, the arrest of Martin on child sex charges, which was both serious and scandalous, compounded the news values of this case because of the central role Martin played as a campaigner against institutional corruption in Tasmania.

6.3 Regulating deviance: Tasmania's sex industry laws

In 2009, the state was reviewing its prostitution laws and this process included asking for public submissions as to whether children were involved in the industry. Regulating the sex industry was an established feature of the media discourse in Tasmania, especially after the controversy around the new legislation in 2005 banning brothels. As such, the media and public debate around prostitution is relevant to the media discourses specific to this case because they informed commentary about the crimes against the child. Another matter that was in media at the time was the charges against high-profile Tasmanian media celebrity Andy Muirhead⁵³ for child sexual exploitation material which, although unrelated to the crime, at times informed commentary on the issues that were being raised about child sexual exploitation and so needs to be explained.

In 2009, Tasmania's sex industry was governed by the *Sex Industry Offences Act 2005*, but it was under review at the time of Martin's arrest. Prior to the 2005 legislation, Tasmanian laws around prostitution were ambiguous. Although being a

⁵³ Tasmanian ABC television personality Andy Muirhead was arrested on child pornography charges in June 2010. While there was no association between Muirhead's crimes and the charges against Martin, the arrest of Muirhead occurring within months of the trials of Devine and the girl's mother, and before Martin's court appearances, led some to speculate that the crimes were connected. Muirhead pleaded guilty to serious charges of possessing child sexual exploitation videos and photographs and received a 10-month custodial sentence in 2012.

prostitute was not illegal in Tasmania, the use of premises for brothels and/or living on the earnings of a prostitute was illegal. To bring Tasmania into conformity with other Australian states, Tasmania reviewed its sex industry laws, which was controversial and resulted in legislation being tabled in the Tasmanian Parliament that moved the laws governing prostitution from criminalisation towards regulation. The Bill, which effectively legalised brothels passed in the Lower House but was blocked in the Upper House by then Labor MP Terry Martin (Paine 23.6.2005).⁵⁴ In response, another Bill was introduced which consolidated and clarified the existing laws around sex work which stipulated that:

It was not illegal to be a sex worker and provide sexual services but that it was illegal for a person to employ or otherwise control or profit from the work of individual sex workers. (Parliament of Tasmania 2009a:3)

The *Sex Industry Offences Act 2005* effectively allowed prostitutes to work alone or in pairs but not in brothels. Within months of the laws passing, sex workers told the *Mercury* they felt 'less safe' and said the brothel owners and pimps were still operating (Duncan. *Mercury*, 22.5.2006). The new Act required a review after five years, which included the question of whether children were working the sex industry. Submissions to the review included one from the Department of Police and Emergency Management (Department of Justice 2009a:10) saying there was no evidence of children being involved before or after the 2005 laws. Another submission by someone who identified as a sex worker suggested:

That if a person under 18 needs money and wants to work it is likely to be done informally rather than through an established sexual services business' (Department of Justice 2009a:10).

⁵⁴ This quandary is by no means isolated to Tasmania. In the UK, Silverman (2012) observes that the Blair government shelved reform initiatives to improve sex worker safety through regulation because of pressure from conservative groups (2012:74–76).

The report concluded that there was:

No conclusive evidence of children being exploited in the sex industry in Tasmania either before or after the commencement of the Act. There is likely to be some involvement of vulnerable children in the industry, but it is most likely on an informal or opportunistic basis. (Department of Justice 2009a:19)

The *Mercury* noted the finding that children were ‘likely’ to be involved and ran a lengthy story leading with: ‘A damning report into the state’s sex industry has concluded that children are almost certainly being used as prostitutes in Tasmania’ (Brown 29.5.2009). The next day it reported (Brown 30.5.2009) that a Tasmanian woman had been ‘pushed into prostitution in Hobart at the tender age of 14’. Concern that children were involved in the industry was expressed in the letters-to-the-editor pages for weeks. Various people and groups called for the sex industry to be banned outright to protect women and children. Others, some identifying as sex workers, argued that legalising brothels would make it easier for authorities to keep track of the health and age of sex workers.

The crimes against the child in Tasmania occurred while this debate was underway and part of both media and public discourse around child sexual abuse. When Martin was arrested, and then Devine, the emerging story of the child’s abuse provided both journalists and others engaged in the question of regulating prostitution a high-profile example of how the state’s relatively new laws contributed to a child being sold for sex through the process of placing an advertisement in a newspaper.

6.4 Established news discourses in Tasmania

This case occurred at the height of a long-standing debate about political impropriety in Tasmania. News discourses were central to these debates, as this chapter has discussed. The concern for government accountability in Tasmania can

be seen also in the appeal of the independent news blog *Tasmanian Times* that is founded on the ideal of the Fourth Estate (Hutchins 2007). The extent of the concern can also be seen in the establishment of Tasmania's Integrity Commission. Concern for political integrity in Tasmania featured in Tasmanian news discourses in the months and years before the study period. Phrases in the news, such as 'Tasmanian has a culture of coziness and everyone is in bed with everyone, doing deals' (Duncan 23.4.2008), that stopped short of calling the government corrupt were not unusual. While the ideal of the Fourth Estate is embedded in the idea of an independent scrutineering of government and other elites, the formation of the Tasmanian Integrity Commission in 2010 is an empirically observable indication of the extent of public concern.

This chapter has drawn on some of the reporting that occurred before and during the study period on government accountability to the public and media discourses in Tasmania at the time. This contextualisation is important if, as this study does, the trajectory of a criminal matter into a conspiracy theory is to be understood. Public and official responses to crime are dependent on the social, legal and political context in which they occur (Easteal 1998) and this chapter has sought to establish the significance of established news discourses about the apparent closeness of the government and the judiciary.

7. FINDING NEWS:,MEDIA AND SOCIAL PROBLEMS,

7.1 Introduction

Investigating what is constructed in news is an important first step in media analysis because it defines and examines what information reached audiences in terms of content and framing (Davis 2007a). Using data collected from the frame analysis of the *Mercury*, this chapter charts how the crimes, and various events and responses to them, were framed as symbolic of a number of problems. Firstly, this chapter describes the various phases of news coverage that occurred in 'peaks', as journalists responded to events and announcements, and 'troughs', when coverage dropped. It then more fully defines the major frames associated with each phase and concludes with a discussion on how the crimes were framed as a series of social problems.

7.2 An overview

The news analysis in this chapter is based on the examination of 328 texts taken from the *Mercury* newspaper, commencing with Terry Martin's arrest in October 2009, until he walked away from the Supreme Court in February 2012. As discussed in Chapter Five, these texts were selected because they reference the crimes against the child at the centre of the study. This chapter begins by describing more fully the four 'phases' identified in this collection of texts and, in particular, how they appeared to be triggered by an event or announcement, rather than initiated by journalists.

7.2.1 *Phases of news coverage*

Content analysis involved counting the monthly occurrence of news coverage. This soon revealed four distinct 'phases' based on spikes in media flow (see Figure 1). The 'phases' of news coverage were:

1. The Crime phase (11 months) was triggered by the arrest of Martin in October 2009. It includes the arrests and court appearances of Gary Devine and the child's mother, and the Commissioner for Children's (Mason 2010) report into the crimes;
2. The Justice phase (4 months) began with the announcement by the DPP, Tim Ellis, that there would be no further arrests in late September 2010 and continued until the end of 2010;
3. The Politics phase (5 months) began in February 2011 with rumours that former the Children's Commissioner would contest Minister for Children Lin Thorp's electoral seat and concluded after the May 2010 election where the Minister lost her seat;
4. The Trial phase (4 months) began with the appearance of Martin before the Supreme Court in November 2011 and concluded when he walked away from the Supreme Court for the last time in February 2012.

It should be noted that these 'phases' are not chronologically neat. Some topics and events, such as the police investigation and the parliamentary inquiry into child protection, occurred across more than one phase. However, these 'phases' capture the peaks in news flows to indicate what triggered and perpetuated news interest.

One of the challenges for this study was that news coverage stretched across several arenas of public life. As Figure 1 shows, the phases of coverage occurred in and outside the courts; this matter was a court story, but also a political story and it also involved a number of government and non-government institutions. The

continuous thread of logic from which the narrative of this case was structured was not immediately apparent when looking at media coverage quantitatively. As described in Chapter Five, in order to observe the trajectory of reporting, and to determine how these coalesced into what appeared to be a controversial narrative about institutional corruption, an approach using frame analysis was needed.

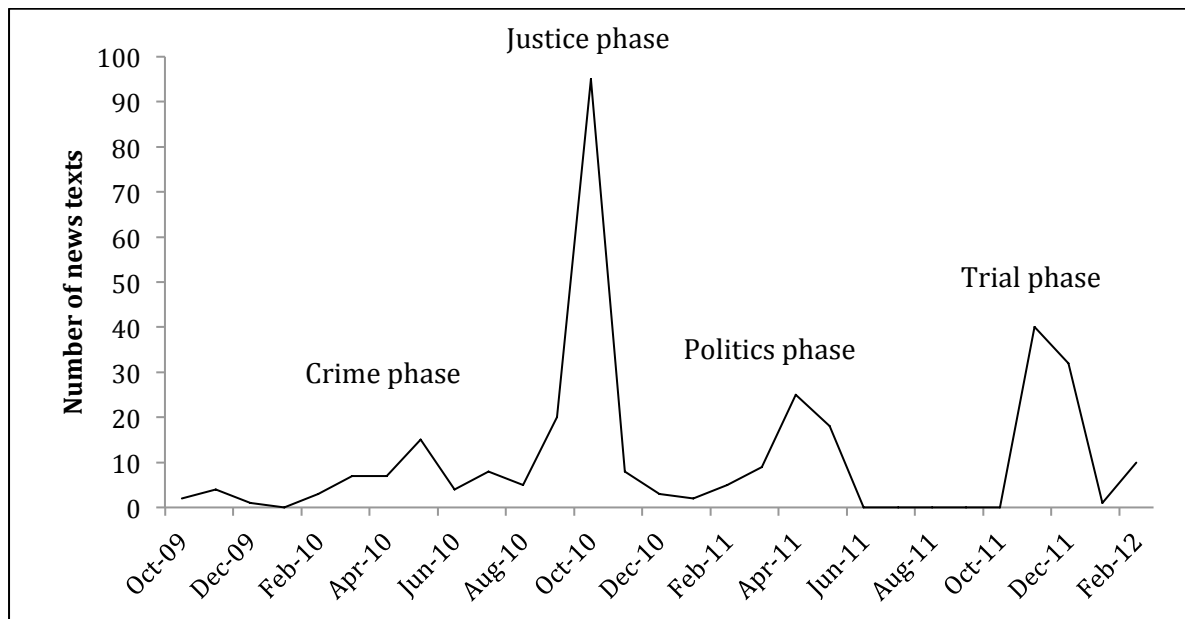


Figure 1: Total *Mercury* newspaper texts (Oct 2009 - Feb 2012).

7.2.2 *Frames for covering crime*

Social problems are defined and framed by journalists through a process that identifies what is deemed wrong, ascribes judgment and blame to its cause, and proposes remedial action (Altheide 1997, 2002b; Entman 2012). A frame analysis using this approach to news coverage enabled me to identify and plot how journalists engaged with both public and official responses to events and outcomes. Frames were identified by the use of certain words or specific phrases, which enabled me to plot recurring themes and perspectives in a case notable for its

complexity. These frames were named ‘government problem’, ‘system problem’, ‘social problem’, ‘justice problem’ and ‘law reform reform problem’ (see Figure. 2).⁵⁵

Frame	Causal and/ or remedial agent	Example for coding
‘Government Problem’	Government and/or Minister	‘We also want the Government to put more money into support services for social welfare, drugs and mental health’ (Clark 31.3.2010).
‘System Problem’	State institutions and/or the individuals within	‘Many ... have supported his calls for a better deal for our children, especially those in the system who have become the responsibility of the state who have been treated in a terrible manner and let down by the system’ (Briscoe 20.10.2010).
‘Social problem’	Reflects broader social problems that the community must address	‘Did someone miss or overlook some clue; a teacher, a GP, a policeman, a social worker? A neighbour?’ (Brown 2.4.2010)
‘Justice problem’	Individual actions or institutional practices within the justice system	‘The justice system is not right,’ she said (McKay, 13.4.2010).
‘Law reform problem’	Legislation, rather than organisational practice, is at fault	‘But I also believe we need to look at legislative reform, particularly to section 124 of the Criminal Code...I think we probably need to have a look at that provision in the light of this case’ (Killick 26.9.2010).

Figure 2: Coding for ‘problem’ frames in the study period.

The ‘law reform problem’ frame was established because calls for law reform appeared to be a curious hybrid between the ‘government problem’ and ‘justice

⁵⁵ These frames are parallel to those identified in Operation Yewtree. Gray and Watt (2013:6) observed that ‘central to the many questions being posed by both [Seville’s] victims and others are why did it happen and why was it not noticed and stopped by police, health, education or social services professionals, people at the BBC or other media, parents or carers, politicians or even “society in general”?’ (see section 3.5).

problem' frames. Each of the frames can be seen to dominate during different phases (Figure 3). During the Crime phase, the 'system problem' and 'law reform problem' frames prevailed as journalists made sense of how such crimes could happen to a child in state care and, further, questioned if the laws were adequate to ensure justice for her. During the Justice phase, following the DPP's announcement that no further charges would be laid, the 'government problem' frame can be seen to quickly rise to dominance as various actors called for the Government to review his decision and matters relating to it. This 'government' frame also remained in focus during the Politics phase because of the explicitly political challenge that the former Children's Commissioner presented to the Children's Minister by contesting her seat. Finally, during the Trial phase, the emphasis turns to the justice system itself, both its administrators and its practices, as the main focus of perceived problems.

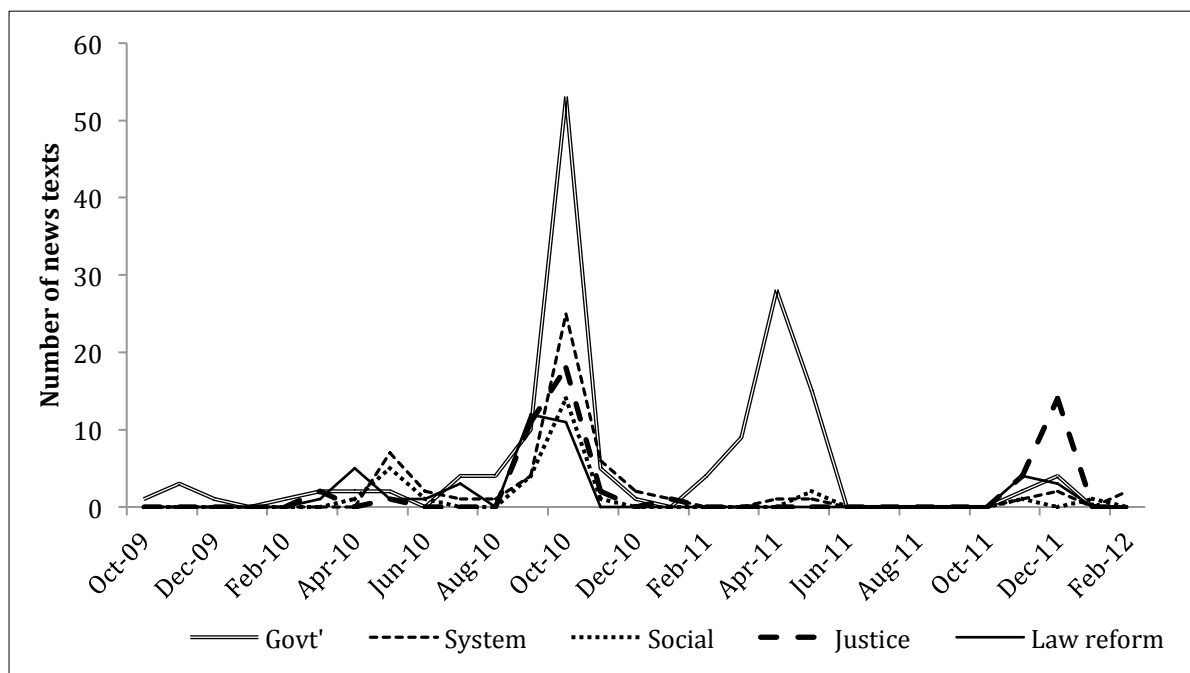


Figure 3: 'Problem' frames (Oct 2009 – Feb 2012).

Although this case study centres on a criminal matter and the debates around this event were frequently of a legal nature, Figure 3 shows the extent to which the

‘government problem’ frame dominates throughout the trajectory of this case. That is to say, the extent to which the Bartlett and Giddings Governments, and specifically Minister Lin Thorp, were blamed for contributing to the conditions that led to the girl’s abuse and were held responsible for providing corrective action. Notably, two problem frames that emerged early in the story, that is the ‘system problem’ and ‘law reform problem’ frames, do not ascend again once the story becomes politicised. In order to understand this process more closely, particularly in relation to how events may have informed the selection of these frames, this chapter will now analyse what events and actions appear to have triggered news coverage.

7.3 Frames: A closer analysis

Dividing content into ‘phases’ was a useful way to break down the complex and at times confusing and contradictory narrative built around the news coverage of this case. This section provides a more complete chronology of events before discussing how these events were framed in coverage.

7.3.1 *Phase One: Crime*

The Crime phase began with Martin’s arrest on 30 October 2009, and included the arrests, trials and sentencing of Gary Devine and the girl’s mother. It concluded when the Minister for Children, Lin Thorp, announced that while investigations showed several government agencies had failed the girl, she was confident that no more children were ‘falling through the cracks’ (McKay, 19.8.2010). Martin appeared at the Hobart Magistrate’s Court and walked past the awaiting journalists and film crews, many of whom he had courted and befriended as a politician, saying only: ‘I can’t say anything, sorry’ (Killick 31.10.2009). Few, if anyone, knew of the circumstances surrounding his arrest, and the *Mercury* quoted his charges as:

You are charged with, on or about 10 September 2009, producing child exploitation material by taking photographs of a naked 12-year-old female whilst performing oral sex and posing seductively whilst knowing or being a person that ought to have known that that material was child exploitation material [and] on or about 10 September 2009, at Claremont, being in possession of child exploitation material, namely downloaded coloured printouts and photographs of persons under the age of 18 engaging in sexual acts. (Killick 31.10.2009)

The following week, the *Mercury* reported that another man, Gary Devine, had appeared in the Magistrate's Court 'accused of acting as the pimp for a child prostitute operating in a Hobart suburb' (Killick 5.11.2009). Little else was written over the Christmas break, other than Martin appearing in the *Mercury's* 'Top 100 Tasmanians' for his high-profile arrest (*Mercury* 29.12.2009).

In late February 2010 the *Mercury* briefly reported that a woman had been 'charged with child prostitution offences involving a 12-year-old girl' (*Mercury* 20.02.2010). The following month, Devine appeared before the Supreme Court and pleaded guilty to:

Procuring a young person to have unlawful sexual intercourse, permitting sexual intercourse with a young person on premises, being a commercial operator of a sexual services business and receiving a fee from sexual services provided by a child. (Glaetzer 23.3.2010)

News coverage involved just two stories in relation to Devine: his court hearing (Glaetzer *Mercury*, 23.3.2010) and his sentencing hearing, in which he received a ten-year custodial sentence (Glaetzer, 26.3.2010). However, news coverage of the crimes following his sentence continued and included:

- Tasmania Police launching a 'man hunt' based on a list which mentioned the clients of the girl as 'central to the investigation' (McKay, 27.3.2010);
- A former brothel madam blaming the new sex laws for the crime (Martain and Duncan 28.3.2010), which was disputed by another sex worker (Duncan 4.4.2010);
- Claims by prostitutes that pimps were still operating in Tasmania (Duncan 11.4.2010);
- Commentary speculating that, by failing to protect a ward of the state, the Tasmanian Government was exposed to legal action (Brown 9.4.2010);
- Debate about whether there should be an independent inquiry into the case (Neales 6.5.2010).

Throughout this period, a number of actors frequently appeared in the media advocating for action. The Children's Commissioner criticised both the legal and government responses to the crimes and quickly became a primary definer on this matter. For instance, in one article (Brown 2.4.2010), the former Children's Commissioner reportedly said that : the public outcry over Devine's 'light' sentence was a good opportunity to test whether Tasmanian sentencing met current community standards; the focus of the debate should shift from how to protect children at risk to an investigation of 'how much demand was in the Tasmanian community' for sex with children; and Tasmania's new sex industry laws should be re-evaluated in terms of how the daily newspaper classified advertisements for sex workers could be used to advertise underage prostitutes. Sexual Assault Support Service chief executive Liz Little also commented. Little was already well-known to journalists and news audiences as the former consultant to the controversial government policy and legislative reforms relating to family violence, collectively

known as Safe at Home.⁵⁶ Little criticised Devine's sentencing, arguing that: 'the full force of the law should be used to track down such "abhorrent" people' (McKay, 27.3.2010). Prior to the mother's sentencing hearing in May 2010, the *Mercury* also gave prominent coverage to calls for Premier Bartlett to commission a full inquiry into the case, which both Mason and Little supported. Premier Bartlett's refusal to initiate an inquiry was criticised in the paper, which treated the internal investigation into child protection as 'behind-the-scenes' and at risk of 'being swept under the carpet' (Neales 6.5.2010). The first of several leaks revealed that on the day the girl's mother appeared in court, 'an explosive report' outlining 'serious failings in child protection services' had been kept secret for two years (Brown and Stedman 10.5.2010). Like Devine, the girl's mother pleaded guilty and received a ten-year prison sentence.

With the two perpetrators in prison, an ongoing police investigation into the clients and Martin's court case stalled until the police investigation finished, news coverage left the courts and shifted to questions of official accountability. Premier David Bartlett appointed the Children's Commissioner to head an independent inquiry into the case. The Commissioner, who wrote his own terms of reference, undertook to consider all the factors that led to the girl's abuse, including the role that newspapers advertising played in promoting an illegal prostitution business. Delays in his final report also served to keep the issue in the news. Mason told journalists his report was delayed because he had asked to see the police statements of the men who had paid for sex with the girl to find out how they knew about the girl, in order to see 'whether tighter controls on advertising sex are needed', but his requests had been refused (Brown 22.7.2010). The Commissioner handed the report (Mason 2010) to the Government in a week that coincided with Thorp departing for

⁵⁶ Safe at Home included the introduction of the *Tasmanian Family Violence Act 2004* which created a police family violence order requiring that a violent person has to vacate premises and allows for detention without charge for a period to ensure the safety of the victim.

a five-day overseas study trip, to which she added a two-week holiday in Spain. The Liberals seized on this coincidence. Their spokeswoman on children, Jacqui Petrusma, reportedly said that since the shocking details of the case were revealed the previous year, the Government had been dragged ‘kicking and screaming’ into discussing its failure to protect the girl (Neales 24.7.2010).

During this period, the Commissioner defended the Minister for taking her holiday, while the report was being addressed by her department (McKay, 2.8.2010). The following week the *Mercury* reported that the Children’s Commissioner’s three-year statutory appointment had expired and that his job would be advertised (Killick 1.8.2010). When she returned from Spain, the Minister told journalists that little of Mason’s report would be released publicly (McKay, 19.8.2010). Other than a single letter from the Community and Public Sector Union (Johnston, 20.8.2010) urging the Minister to increase frontline resources to child protection, there were no further stories in this phase.

7.3.1.1 Framing in the Crime phase

The initial phase of reporting this crime is notable for being court-focused until Devine’s sentencing. The appearance of an accused in court, their conviction and the delivery of a sentence in accord with community expectations is embodied by the principle of open justice; the importance of justice being seen to be done is part of the catharsis necessary for community cohesion and faith in democratic institutions. The five ‘problem’ frames were all evident in this phase (see Figure 4). Rules of contempt of court limited news coverage of criminal matters from the time of arrests until court proceedings commenced. However, because Martin was a political figure, the *Mercury* was able to speculate on the ramifications of his absence from parliament without risking being in contempt of court. Immediately after Martin’s arrest, political reporter Sue Neales (*Mercury*, 3.11.2009) speculated on how Martin’s absence might affect ‘the highly anticipated appearance’ of former Police Chief

Richard McCreadie before the parliamentary committee inquiry into senior government appointments.⁵⁷

The 'government problem' frame re-emerged in 2011 with a *Mercury* editorial (*Mercury*, 12.4.2010) calling on the Bartlett government to put children on the government's agenda and this frame remains throughout the phase. The 'government problem' frame was dominant in this phase and the 'justice problem' and 'law reform' frames ascended following Devine's sentencing, triggered by criticisms that Devine should have received a harsher sentence, as well as debate about whether the state's sex industry laws were also responsible for the abuse of the girl. The 'social problem' frame began to ascend in May when the Children's Commissioner, Paul Mason, was appointed to head the independent investigation of the case. The Children's Commissioner contributed to this frame by questioning how teachers, doctors and other individuals that may have had contact with the girl, had failed to see her predicament which contributed to news framing directed at locating the problem of what happened to the girl with the welfare system, but also other professionals who come into contact with children at risk of abuse.

Minister Lin Thorp, under pressure to make the Children's Commissioner's findings public, also raised this question, but phrased it in a way that deflected criticisms of her Government and the bureaucracies in her portfolio by asking what these crimes said about the broader community in relation to protecting children. The need for law reform was raised during this early phase, and was discussed largely in relation to how the state's prostitution laws had contributed to a girl being sold for sex in the newspaper. This was notably undertaken through a series of articles from sex workers that both blamed and defended the state's brothel laws. This debate, which was sponsored by sources from the adult sex industry rather

⁵⁷ The inquiry became controversial amid criticisms that parliamentary privilege had enabled some politicians to raise allegations of misconduct against senior political figures. For instance, the Law Society of Tasmania criticised former Premier Paul Lennon for using the protection of the inquiry to question the integrity and conduct of the DPP (Neales 20.11.2008).

than children's welfare groups or sexual assault services, served to further sediment the question of the abuse of the child in question within the context of prostitution, rather than child sexual exploitation.

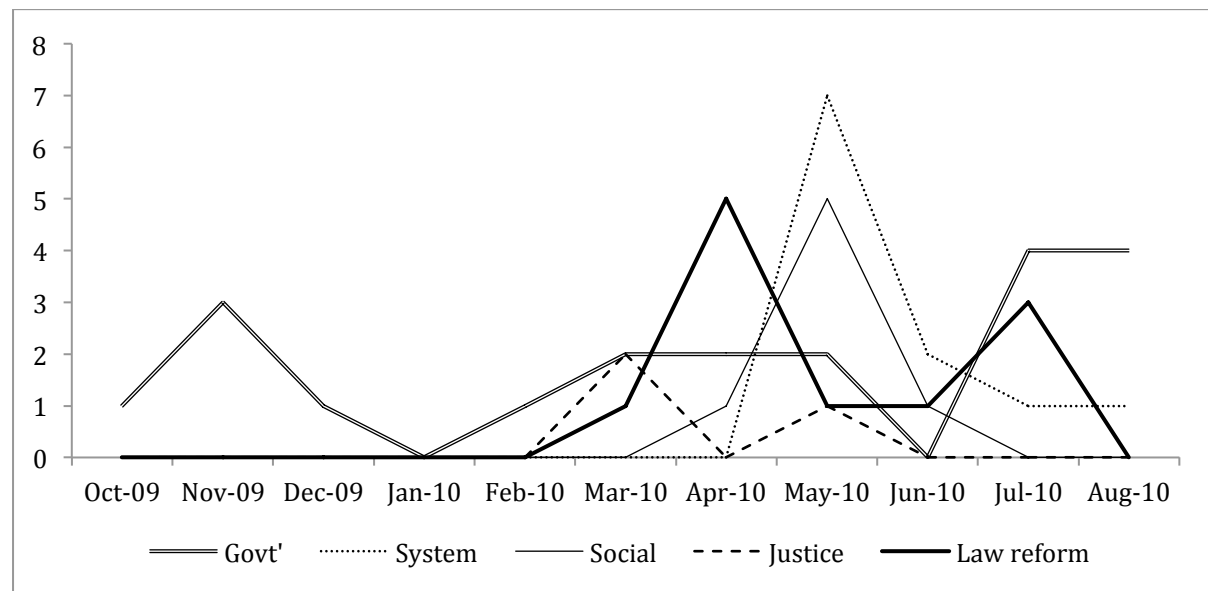


Figure 4: 'Problem' frames in Crime phase (Oct 2009 - Aug 2010).

Framing this case as a problem with prostitution, rather than child welfare, appears to have distracted the crimes against the girl from being treated in news coverage as an opportunity to discuss the social conditions that led to her abuse. Such framing also appears to have steered scrutiny away from the attitudes of those who may have turned a 'blind eye' to the girl's exploitation, as Mason (2010) later suggested. However, framing the debate within prostitution also focused on an important aspect to this case which was an apparent tolerance or double standard shown towards young people who are involved in the sex industry. For instance, one sex worker told *Mercury* reporters (Martain and Duncan 28.3.2010) that she had heard 'rumours' of an 'underage' girl working in Hobart but had never suspected she would be as young as 12:

‘I assumed she must have been 16 or 17, which would have been bad enough, but this was just heinous,’ she said.

‘And under the current laws, there is no way to prevent it from happening again because sex workers operate out of hotel rooms and newspaper ads and there is no way to police it’. (Martain and Duncan 28.3.2010)

This sex worker did not report the rumour to police. Similarly, it was reported that some of the men who were questioned by police admitted to attending the hotel or Devine’s flat but had left because ‘Angela’ appeared under age (Killick and Dawtrey, 23.11.2011). Yet none of them appear to have contacted police at the time.

The question of the socially accepted age of sex workers, as opposed to the legal age, was not raised again in media until Martin’s trial in 2011. Instead, with Devine and the girl’s mother both serving lengthy jail terms, and a police investigation still under way, news coverage of the case was temporarily dropped.

7.3.2 Phase Two: Justice

Pressure for the Children’s Commissioner’s report to be made public was almost exhausted when the *Mercury* landed a bigger story that triggered the second phase. It first reported that ‘Ellis is believed to be reluctant to charge clients of the child prostitute with the crime of under-age sex because of a lack of admissible evidence’ (Neales 25.9.2010a). The key feature of the Justice phase is that it contained the highest number of news articles (114 items) and, despite being based on a legal decision by an independent statutory office, it continued to be framed as a ‘government problem’.

The DPP reportedly based his decision on comparing the case to similar interstate cases and deciding that a court was unlikely to convict the men identified by police as having paid for sex with the girl, especially because their time spent with the child was brief and in a darkened room. His unwillingness to put a traumatised and reluctant child in the witness box was also reported as a deciding

factor. This story, appearing on the front page of the *Mercury*, with a spill on page seven, established all the salient details for this phase. The Children's Commissioner was the first quoted, arguing the men should be prosecuted as a deterrent to others:

'Those factual issues, that it was too dark or they thought the girl was 18, should be tested in the courts rather than it effectively being tried by the DPP,' Mr Mason said.

'Otherwise the community may find it hard to have confidence in the executive procedures of the law, especially when there is such public interest in a case like this, given the young age of the girl and the number of men involved'. (Neales 25.9.2010a)

This story also noted that Tasmania Police used the 'list of the girl's clients and their phone numbers, as well as a bookings diary for her services'. The next day, the Children's Commissioner challenged Ellis's argument that pursuing more than 100 men would be costly for the state and traumatic for the girl, saying he would be surprised that 'there's not one, five, even a handful of cases where a prosecution isn't at least possible' (Killick 26.9.2010). On Monday, the *Mercury* repeated the polarisation of views using different sources. Child protection advocate Steve Fisher called for prosecutions on the grounds that the benefits of 'naming and shaming' should not be overlooked because of the likely expense to the state (Mounster, 27.9.2010). Outspoken barrister and *Mercury* columnist Greg Barns described Ellis's decision as 'probably a sensible one'. That night, *ABC News* reported that leaked information had revealed a police officer was among the names in the police investigation of alleged clients (Bester 27.9.2010) and two days later, Tasmania Police confirmed it would not charge three officers whose telephones were linked to Devine's telephone records (Neales 29.9.2010). In this report, the diary that was supposedly central to the police investigation is denied:

Mr Tilyard said it was also untrue that the names and phone numbers of alleged clients had been obtained from an appointments diary or list, despite the two court cases convicting Mr Devine and

the girl's mother referring to a bookings diary kept by the girl's 15-year-old sister. (Neales 29.9.2010)

The following day, the *Mercury* reported the Attorney-General's response:

Despite the emotion surrounding the 12-year-old being used as a prostitute, she would not 'throw out' centuries-old laws over just one case, however shocking it was.

But she said she might consider reviewing the relevant section of the Criminal Code if asked by the DPP to look at the defence provision once all proceedings relating to the 12-year-old were complete. (Neales 30.9.2010)

Nearly a week after the rumour of his decision broke, the DPP finally gave his only interview on this decision to journalist Airlie Ward, which aired on the ABC's Tasmanian Friday night current affairs television program, *Stateline* (Ward 1.10.2010). In this interview, Ellis explained his decision to not pursue further prosecutions. The following day, Tasmania's three Saturday papers ran the Memorandum of Advice, which included a summary of the evidence of seven men who interviewed by police and outlined the reasoning behind the DPP's decision (*Mercury*, 2.10.2010). It was an apparently unprecedented decision to publish such an internal document, albeit redacted to ensure anonymity for those mentioned, and the details made uncomfortable reading. As well as explaining the problems police faced in terms of getting enough evidence, the Memorandum, as it became known, also revealed that the girl had told police that she was unable to identify any suspects and had refused to participate in any identification procedure.

Despite Ellis's attempts to explain his judgment by appearing on television and having the redacted Memorandum published, the *Mercury* continued to demand that the Government review his decision and the law. Notably, the newspaper used its letters-to-the-editor page to maintain momentum and it took the unusual step of opening the *Mercury* website's comment section, usually closed for reports on criminal matters and proceedings, to public comments on the case following the

DPP's decision in October 2010. The headlines on each of the letters on one day illustrate the sense of public opinion being conveyed by the newspaper: 'Shocking lack of action', 'Change the law', 'Pursue this case', 'Name and shame', 'Terrible message', 'Express outrage', 'Show kids we care', 'Devastating betrayal' and 'So many questions' (*Mercury*, 2.10.2010). That day, the paper also reported that the Attorney-General had said she would not review Ellis's decision, but that she had asked the Tasmanian Law Reform Institute to consider whether a review of the defence of mistake as to age provisions was required (Neales 2.10.2010).

On Monday, in his regular column, Greg Barns defended the Attorney-General's decision to back Ellis as 'a voice of reason among the hysteria' (4.10.2010). However, in the same paper, Neales (4.10.2010) also weighed up the arguments for and against the DPP's decision, describing it 'as a case of damned if he did and damned if he didn't' but also challenging the notion that this matter was strictly a matter of legal reasoning. Instead, Neales justified public and media interest in the scandal because of the alleged involvement of police, and rumours of other elites:

Inherent in this outrage have been rumours that well-known figures such as lawyers, politicians and high-profile sportsmen might be among the suspects ... It is understandable the debate about why the men who had sex with her are not going to be charged has become such an issue of media, political and public interest. It is entirely proper that it did. (Neales 4.10.2010)

In maintaining its pressure, the *Mercury* juxtaposed any official statements with criticism. For instance, the Attorney General calls for 'public speculation' to cease was juxtaposed in one report with the Liberals' justice spokesperson Vanessa Goodwin saying there 'was a clear need for a thorough review not only of the laws but also of regulations governing the state's sex industry' (Killick 3.10.2010).

Despite efforts to conclude this controversial matter, the story would not go away. Just days after the DPP's announcement, *ABC News* reported that police had confirmed they would be taking DNA from a two-month old baby, whose mother

was the 15-year-old sister of the 12-year-old victim, because of suspicions that Gary Devine was the father of the child (Ogilvie and Bevan 6.10.2010). That week, the Government also released its response to The Children's Commissioner's findings and recommendations (Tasmanian Government 2010).⁵⁸ However, the release of the report was also mishandled. Although Mason appeared with Minister Thorp in the press conference, the *Mercury* (Neales 7.10.2010) focused on the Government's treatment of the Children's Commissioner during the press conference, where he reportedly expressed:

Anger and frustration when he was left standing in ignorance by Children's Minister Lin Thorp in front of the media after she walked out of a heated, packed media conference over the Government's failure to protect the girl. (Neales 7.10.2010)

By then, the Minister would have known that Mason, whose job had been advertised months earlier, was being replaced as Children's Commissioner by Aileen Ashford, although this had not yet been made public.

The Children's Commissioner's independent report (Mason 2010) into the circumstances that had led to the child's abuse, and the Government's response to his recommendations, did not lay to rest concerns about the Government's response to the crimes against the child. Instead, there were calls for the Minister to resign (Neales 8.10.2010) and for a full inquiry into child protection in Tasmania (Neales 13.10.2010). Eventually, the Government negotiated with the Liberals to establish a Parliamentary Inquiry into the state's child protection services, which was to be headed by Greens parliamentarian Paul O'Halloran on 14 October 2010.

⁵⁸ Mason's (2010) findings are striking in their similarity to those in the findings of the UK Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups (Berelowitz et al. 2013) discussed in Chapter Three. For instance, Mason criticised child protection workers for overlooking the risks, such as the presence of Devine in the family home, and noted that 'police treatment of the absence/presence of consent in underage sex may have confused and distracted Child Protection Services from the risk' (Mason 2010:7).

The perception of a government unable to respond to public demands for accountability and transparency was compounded when the Government announced that Mason would not be re-employed as Children's Commissioner and that the new Children's Commissioner would be a senior government bureaucrat, Aileen Ashford, who had previously headed one of the agencies that Mason had criticised in his report. This triggered another salvo of stories and letters-to-the-editor that cast Mason as 'dumped' by both the 'embattled' Minister more interested in political survival than children or political process and a Government that poorly treated statutory officers and public servants who criticised them.

News dwindled for a few weeks until November when Martin was back in the news, because his legal team had called for the men who had been witnesses in Devine's prosecution to be witnesses in Martin's upcoming trial (McKay, 12.11.2010). The Tasmanian Parliamentary year finished with the Children's Minister being the first minister in the state's history to be expelled from the Tasmanian Parliament after she ignored the Speaker's request to stop interrupting while the Parliament heard criticisms of her handling of child protection (Neales 19.11.2010). The last word about the case for the year, and the Justice phase, was given to calls for an independent inquiry into why charges were not laid against the other men (Neales 3.12.2010).

7.3.2.1 Framing Justice

The Justice phase is an important phase because it marks the shift in this case from the court room into the political sphere and it indicates how open justice, and other processes aimed at transparency and accountability, are not actions limited to the release of information, but also require interpretation, sense-making and deliberation to achieve any catharsis or resolution. In order to explain this observation, it is important to examine how the events mentioned were framed as problems.

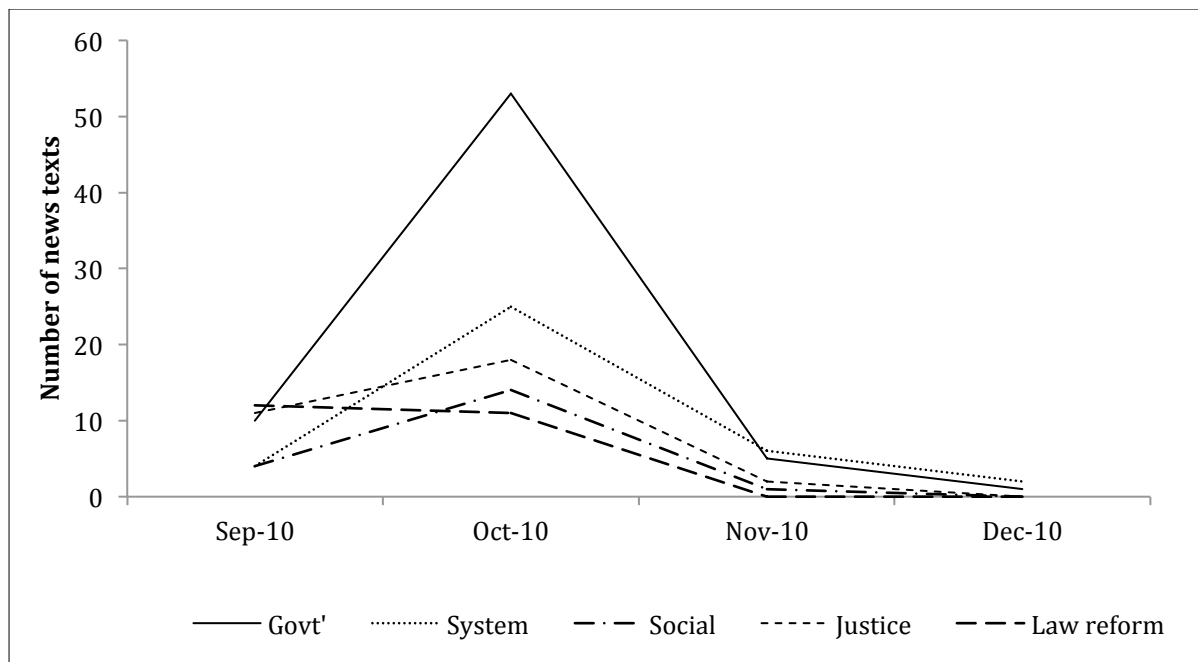


Figure 5: 'Problem' frames in Justice phase (Sept 2010 – Jan 2011).

This phase was triggered by the announcement that the other clients would not be prosecuted and the initial reports framed this announcement as a justice problem because it was the prosecution process of both the practices of Tasmania Police and the DPP that led to the outcome. At first (see Figure 5), this announcement was framed as a problem with the justice system and, owing to the defence of mistake as to age, a problem for law reform. However, the news coverage predominantly framed this matter in terms of being a problem with the Government, in particular, the Minister for Children. This frame was established by Paul Mason, Liz Little, Sir Max Bingham and in letters-to-the-editor calling for Government intervention in Ellis's decision. This demand for review challenged the principle of the separation of powers, a point ignored in news media, but noted by the Attorney-General during Question Time:

We do have separation of powers in this State, which grew out of the need to remove politicians from that side of our system and to depoliticise issues of crime. Yes, technically under the law I do have the ability to intervene and to take a matter to the courts, but it is not

a power that you would use lightly. In fact I am advised that the DPP could straightaway follow me to the court and wipe out anything I did on the basis that there was not sufficient evidence to bring forward a successful case. (Parliament of Tasmania 2010b)

The next two frames that occurred almost simultaneously were the ‘social problem’ and ‘system problem’ frames. These frames were a result of the Bartlett Government attempting to deflect criticisms that they should act by instead blaming an overstretched child protection system and broader societal issues. However, these frames did not maintain much traction, in part because blaming society is a complex and ambiguous problem on which a remedy is difficult to articulate; while the latter returned the onus of responsibility onto the Government to ‘fix’ the burdened system. Such a rejection of this framing was outlined in the *Mercury*:

She blamed the bad mother, the nasty pimp and the timing of the incident coinciding with her department bringing in a new and much better model for child protection. And then she blamed the community for not caring enough...It was not Ms Thorp’s finest hour...The perception from the outside, however unfairly, is of a minister more concerned about deflecting political damage and bad news away from her own skin than caring about Tasmanian children. (Neales 9.10.2010)

The ascendancy of the ‘government problem’ frame can be seen as an indication of the news access granted to Opposition parties as government critics which, in turn, allowed the problems identified in the child protection system or law to be transformed into a single, and easily articulated, example of a ‘problem’ caused by Government inaction. Despite attempts by the Government to appear to act in accordance with due process, rather than political expedience, the Government response was nearly always framed as reluctant and poorly managed.

This phase ended in December 2010, as the year drew to a close. After an intense time of political scrutiny by the *Mercury*, the official line still held: Ellis had not

changed his decision; Thorp remained Minister for Children; the Children's Commissioner, a key proponent of the politicisation of the crime, had been sidelined; and Martin's involvement in the case was virtually invisible in news coverage while he awaited trial. One could think that the problems the Government had with this case had been mostly resolved, but the New Year brought in a particular, albeit unusual, political element to the case.

7.4.3 Phase Three: Politics

The Politics phase began in February 2011 when the *Mercury* reported that Minister Thorp would have to repay some of the expenses incurred during her controversial overseas trip the previous year, but it is centered on the Legislative Council election in May⁵⁹ and concluded in June 2011, as news reports dwindled in the wake of the election. This phase was notable for the continued ascendancy of the 'government problem' frame over the other frames. This section begins by outlining the news reports before discussing how these texts were framed.

The New Year started with the unexpected resignation of Premier David Bartlett and the appointment of Lara Giddings as Premier (Brown 24.1.2011). A few weeks later, it was revealed Thorp had to repay nearly \$3000 after the Australian Tax Office ruled the minister's controversial 2010 trip had been partly for holiday purposes (Neales 10.2.2011). However, it was the Legislative Council elections, to be held in May, which set the tone for political reporting for the months to come. Elections tend to amplify the politicisation of social issues and problems, but few elections become as bitterly personalised as the contest for the seat of Rumney held by then incumbent Minister for Children, Lin Thorp. Her two contenders were the former Children's Commissioner, Paul Mason, and former Tasmania Police commander, Tony Mulder, who also ran as an Independent on a platform that included challenging the

⁵⁹ As previously discussed, elections for the Upper and Lower Houses of parliament are held separately in Tasmania.

‘dishonesty’ of the Labor Government and its ‘refusal’ to remove the ‘mistake of age’ (Neales 25.2.2011).

While Mason’s challenge was destined to keep the Government’s handling of the case in the news, Thorp aggravated coverage when she told ABC journalist Felicity Ogilvie, on national morning radio, that she did not reappoint Mason because he had come fourth out of five candidates in the selection process (Ogilvie, *Radio National*, 24.3.2011). In this story, Mason replied to Thorp’s damning leak of what should have been confidential information by telling Ogilvie that the panel that did not re-appoint him was:

Selected by the minister or the minister’s servants [including] a man who I had threatened to take to court because Lin Thorp had directed him ... not to provide me with information related to the 12-year-old that I required of him. (Ogilvie, *Radio National*, 24.3.2011)

The backlash over Thorp’s comments, variously framed as a faux pas or a gross abuse of confidence for political gain, was worsened when the Minister refused to apologise for revealing what was confidential information (Neales 26.3.2011). Eight days after her comments, the Minister did eventually make ‘jeans-clad, gum-chewing public apology’ that was depicted as insincere and politically expedient (Neales 9.4.2011). Mason’s criticisms of Thorp were not treated with a similar scepticism, and Mason appeared to enjoy the support from journalists he had as Commissioner, despite now entering the political sphere.

In April, the new Commissioner for Children, Aileen Ashford, released the *2010 Child Protection Case Audit of Children in Out of Home Care* (Ashford 2011), which linked the systemic failings of child protection to the current Government’s budget cuts. Calls for the Minister to resign resumed. Adding to the Government’s woes was another leak. This time, just days out from the election, the ABC obtained a 61-page copy of Mason’s 2010 report, in which it was revealed that lawyers acting on behalf of the girl were unable to access her legal and departmental files. This had

forced her legal team to seek an 'exceptional order' in the Magistrate's Court to have the Government release the documents. The leaked report also revealed that the Children's Commissioner had suspected that Tasmania Police had ignored claims by the extended family that the girl was being prostituted (Ogilvie 4.11.2011). The *Mercury* reported this leak and the denials by Tasmania Police that they had any record of family members attending Glenorchy police station to report the abuse (Neales 5.5.2011). This story also reports the now former Children's Commissioner saying he had no reason to believe or disbelieve the family or the police. This comment is also an example of how investigations into the circumstances that led to a ward of the state being sold for sex for four weeks, without detection, continued to point the finger at the failure of police and others to act. However, attempts to relocate attention onto re-examining institutional responses to child sexual exploitation kept returning to the 'government problem' frame. For instance, the *Mercury's* editorial unequivocally kept the blame on the Government:

The State opposition has accused the Minister of acting out of self-interest in this case. The more damning indictment should be that she has shown insufficient interest in advancing this young girl's best interests. (*Mercury*, 9.5.2011)

Thorp lost her seat in the election the following week to Tony Mulder (Neales 9.5.2011). Mason came third. There was little reporting about matters associated with the crime after this period, which concluded the political phase.

7.4.3.1 Framing politics

News coverage relating to the crimes in the Politics phase was centred on the Legislative Council elections focusing mostly around two foes, Thorp and the former Children's Commissioner Mason. Not surprisingly, the 'government problem' frame dominated, peaking in April, just before the May 7 election, before dropping off sharply as the Premier reassembled her Cabinet after the election. Other frames were

almost absent (see Figure 6). The politicising of this case at this stage was clearly a result of the Legislative Council election, which provided the former Children's Commissioner with an opportunity to re-enter the public sphere as an election candidate, on the basis of his established profile as a critic of the incumbent Government. The Children's Commissioner appears entirely supported in this process by journalists: his calls for further prosecutions are not questioned in the light of being a potentially traumatic experience for the child in question; and his attacks on Thorp are not questioned as being politically motivated. In contrast, the Government's response to the Children's Commissioner remained framed as an attack on a Government critic and people's champion rather than a political contender.

While the 'government problem' frame dominates throughout, by the time the election occurred, a report by the new Children's Commissioner, Aileen Ashford, (2011) into children in 'out of home' care ensured that the systemic problems that contributed to the crimes also remained in the news. This can be seen in the spike in the 'system problem' frame in April. In contrast, both the 'social problem' frame and more notably, the 'justice problem' and 'law reform' frames were barely present until the end of this phase. The 'justice problem' frame returned when Liz Little and the Liberals called for the sex offender register to be more transparent (Smith 6.9.2011). The 'law reform problem' frame returned each time the Liberals questioned the apparent tardiness of the Law Reform Institute's report into the law in relation to sex with young people and the defence of mistake as to age. The political phase finished in October 2011 as commentary in the aftermath of the elections dwindled. Until the upcoming trial of Martin it appeared there was little to report.

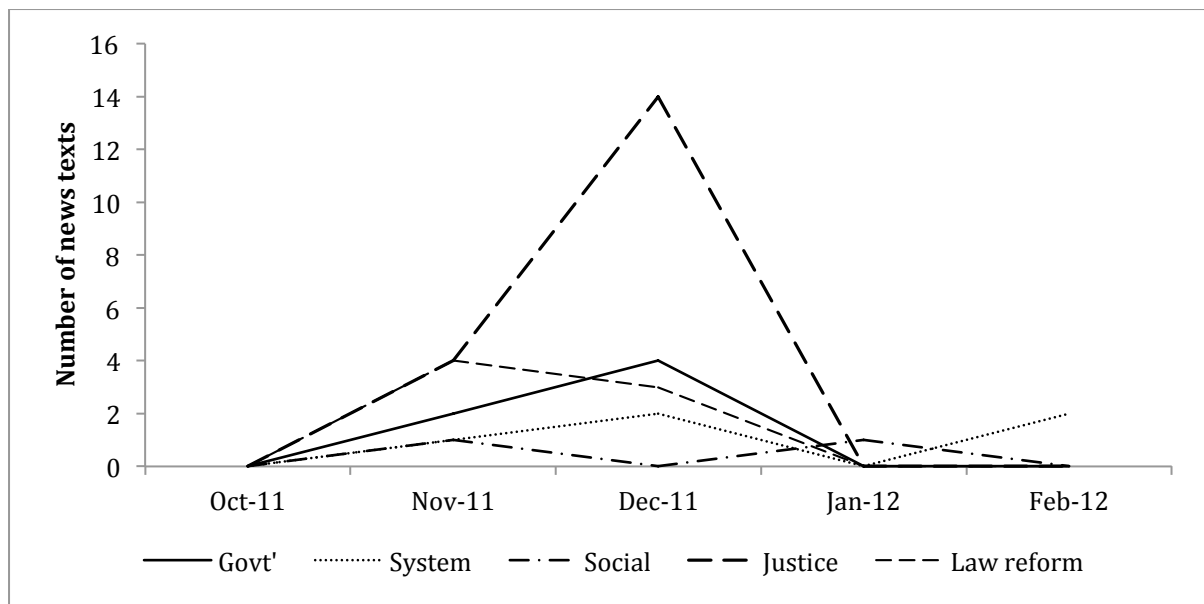


Figure 6: Problem frames in Politics phase: (Jan 2011 – Oct 2011).

7.3.4 Phase Four: 'The Trial'

The fourth and final phase in reporting revolved around the court hearings of Terry Martin. The charges against Martin were heard in two separate Supreme Court cases. In the first, held in December 2011 before Justice David Porter, Martin pleaded not guilty to indecent assault, sex with a young person under 17, and producing child exploitation material (*Tasmania v Martin*). In the second hearing, heard before Justice Allan Blow in February 2012, Martin pleaded guilty to possessing child pornography and therefore did not have a trial, but a sentencing hearing (*Tasmania v Martin [No.2]*). This fourth and final phase is similar to the first phase because most of the news coverage consisted of court reporting or responses to what reportedly occurred in court. This section begins by outlining the news reports, before discussing how these texts were framed.

Martin faced a jury in the Tasmanian Supreme Court in Hobart, a little over two years after he was arrested. On the first day of his trial, the girl at the centre of the case, now aged 15, testified as a witness via video-link. The trial made the *Mercury's*

front page. Court reporter Zara Dawtrey noted that there was no question of Martin's alleged involvement in the crime against the girl, only whether he should have known the girl was underage (Dawtrey, 16.11.2011). Martin's defence was based on whether he, like the other witnesses in Devine's case, had reasonable grounds to believe that the girl was over the age of consent (17 years). Like the other men interviewed by Tasmania Police, Martin claimed he was not looking for an underage prostitute when he answered the newspaper advertisement for 'Angela 18' and that there was nothing in the girl's appearance or behaviour to suggest she was younger. His defence also argued that the medication he was prescribed to treat the symptoms for Parkinson's disease had triggered an impulse control disorder that resulted in him becoming 'addicted' to sex workers and pornography (Dawtrey, 18.11.2011b). His defence lawyer Peter Barker also put to rest the idea that Martin was any sort of serial offender, saying if Martin had been up to no good, the public would know about it:

'Given all the publicity since he was first charged, if there were any skeletons in his closet it's likely they'd be rattling pretty loudly by now,' he said. (Dawtrey, 19.11.2011)

Some of these men who had admitted to having sex with the girl and who had agreed to be video interviewed by police appeared in the Supreme Court as witnesses. They appeared in court on the second day of the case, one wearing a woman's wig and another in a pair of dark sunglasses (Dawtrey, 18.11.2011a). Dawtrey reported that both men told the court that the child behaved and looked as though she was 19 or 20 years old, and noted the treatment of the witnesses who were permitted to stand in court wearing wigs and sunglasses to hide their identity, and appeared to be given special access to and from the court — unlike Martin 'who has to front waiting media on his way in and out of the Supreme Court each day' (Dawtrey, 18.11.2011a).

Over several days of evidence and blistering news coverage about his alleged crimes and his sexuality, Martin was found guilty of two of the three charges. As an indication of how complex the laws are in relation to sexual crimes against minors, the jurors were unable to agree on whether or not Martin was guilty of aggravated sexual assault when he first performed oral sex on her, presumably because they were not satisfied beyond reasonable doubt that he did not hold an honest and reasonable belief that she was over the age of consent. The jury, however, agreed, though not unanimously, that he was guilty of other charges, that is, sex with a young person under 17, based on him later having the girl give him fellatio, and producing child-exploitation material committed when he photographed the child undertaking oral sex (Dawtrety, 22.11.2011).

The following day, the *Mercury's* front page was prominently headlined: 'Girl-sex case outrage' and carried a story quoting Little and Mason describing the failure to charge more of the clients as 'a bloody disgrace' (Dawtrety and Killick 23.11.2011). Little suggested that the claims made by the men that the girl looked old enough or that it was too dark to see her age were dubious and that there was reason to believe that the men did not have reasonable grounds to believe the girl was older:

My advice is there were several who got there then left when she answered the door in broad daylight because she was obviously too young. I also understand that there were others who asked for ID and left when she couldn't provide it. (Dawtrety and Killick 23.11.2011)

In this article, the former Children's Commissioner also challenged what occurred in court and the need for an independent inquiry into the prosecution process:

The evidence that came out in his trial showed it wasn't a matter of them seeing her inside a dark and dingy flat – she opened the door to them in daylight. (Dawtrety and Killick 23.11.2011)

In response to this news coverage, Ellis spoke on the *ABC Local's Morning Show*, and the *Mercury* reported his comments:

Mr Ellis said that was because the jury had failed to reach a decision on the first count even though Martin said he had performed a sex act on the girl in good lighting for 50 minutes.

'...a jury wasn't satisfied to the requisite degree to convict him, so what earthly hope would we have had as to the other ones?'
(*Mercury*, 24.11.2011)

Ellis had the Memorandum rerun in the state's three daily newspapers and, by the end of the week, the letters-to-the-editor pages debated whether the state's prostitution laws were responsible for the abuse of the girl. Martin was sentenced to a 10-month jail term, wholly suspended, because, as Justice Porter explained in his sentencing comments, Martin's offending was caused by the hypersexuality initiated by the Parkinson's disease medication and for that reason he was unlikely to re-offend (*Tasmania v Martin*, CoPS, Porter J, 29 November 2011).

The following day, the *Mercury* reported that Martin was one of several claimants in a proposed class action on the pharmaceutical companies that distribute the Parkinson's disease medication which has been linked to impulse control disorders (Crawley and Glaetzer 1.12.2011). Mentioning Martin in the first paragraph, the story went on to quote another Tasmanian man, Andreas Werth, who like Martin was in his 50s and lived alone but, unlike Martin, his medication had led to an addiction to gambling, not sex. The story mentioned the drug Cabaser, the drug linked to Martin's hypersexuality, for the first time. Tasmanian doctor Frank Nicklason was quoted saying that since Martin's arrest, Tasmania had employed three specialist Parkinson's disease nurses and that Martin's situation also raised general public awareness of the link between impulse control disorder and Parkinson's disease medications.

The following week, the *Mercury* ran a front-page story based on claims by Beyond Abuse spokesman Steve Fisher that Tasmania was a 'paedophile paradise':

He says there are other high-profile Tasmanians who are sexually abusing children but their power and associates mean they are considered 'untouchable' in this state.

'I wish I could say who was involved, but I can't,' Mr Fisher said. 'I will say the community would be shocked.' (Dawtre, 5.12.2011)

A week later, the Select Committee into Child Protection tabled its findings in Parliament (Parliament of Tasmania 2011). In an editorial, the *Mercury* used the tabling of the report to maintain pressure on the Government:

Children are still falling through the cracks, and Tasmanians have heard enough of these stories to come to that conclusion without waiting for a parliamentary report. (*Mercury*, 17.12.2011)

In February 2012, Martin appeared again before the Supreme Court to plead guilty to 'possessing a child pornography collection made up of hundreds of sexually explicit images of children as young as eight' (Dawtre, 9.2.2012). His guilty plea meant a jury was not empanelled and Martin's barrister Peter Barker presented a two-hour mitigation plea before Justice Blow, arguing that Martin was under the influence of prescribed medication at the time of the crimes. The following week, Justice Blow sentenced Martin to one month in jail, wholly suspended on the condition he be of good behaviour for 21 months (Dawtre, 17.2.2012).

Martin's sentencing was overshadowed by reports that family members of the girl had assaulted Martin as he left court with his legal team and a court security officer. In a narrow walkway in St David's Park, adjacent to the court, Martin was attacked by members of the victim's Family. The child's 62-year-old grandmother hit Martin with her walking stick before the girl's 42-year-old aunt hit him with her handbag that was heavy enough to cause a cut to his head and punched him in the groin. The reports describing the attacks and the letters responding to Martin's sentence conclude this fourth and final phase.

7.3.4.1 Framing the Trial phase

News coverage of the Trial phase mostly involves court reporting and responses to what occurred in court. The 'justice problem' frame dominates, peaking immediately after Martin was sentenced in late November 2011 (see Figure 7). The dominance of the 'justice problem' frame indicates the complexity of legal arguments and the public reaction to Martin's defence and sentencing. This was compounded by established themes in this frame, such as questions about the police investigation and the DPP's decision not to prosecute. The defence of mistake as to age was a feature in this phase as were calls for law reform, peaking during Martin's November 2011 trial. While this phase is clearly marked as a matter of justice and law reform, the 'government problem' frame at times features prominently amid renewed calls for action by Mason, Little and the Liberals. The 'system problem' frame also briefly appeared in November, when the *Mercury* reported on the public hearings period of the Select Committee Inquiry into Child Protection (Brown 9.11.2010) and the fundraising efforts to support a legal bid for the girl to sue the state for damages (McKay, 10.11.2010). It arose again in February in some of the comments in the letters-to-the-editor that followed Martin's sentencing for child pornography.

Overall, the Trial phase acts as something of a denouement. The reasons why Martin appeared singled out for prosecution, while others escaped arrest, were spelled out. Evidence presented to the DPP by Tasmania Police indicated that the other men who had sex with the girl did so in the 'dark' hotel room or in Devine's 'dark' unit, but Martin, had sex with the girl in his home, during the day, for a period of hours. Martin could not deny he had sex with the girl because he had photographed the acts. The graphic and disturbing details heard in court and the controversial public response to Martin not being jailed ensured that news coverage focused on the 'justice problem' frame. Critics of the Government's handling of the

case ensured that a second, though less prominent frame, continued to focus on the Government and the systemic problems that this case had raised.

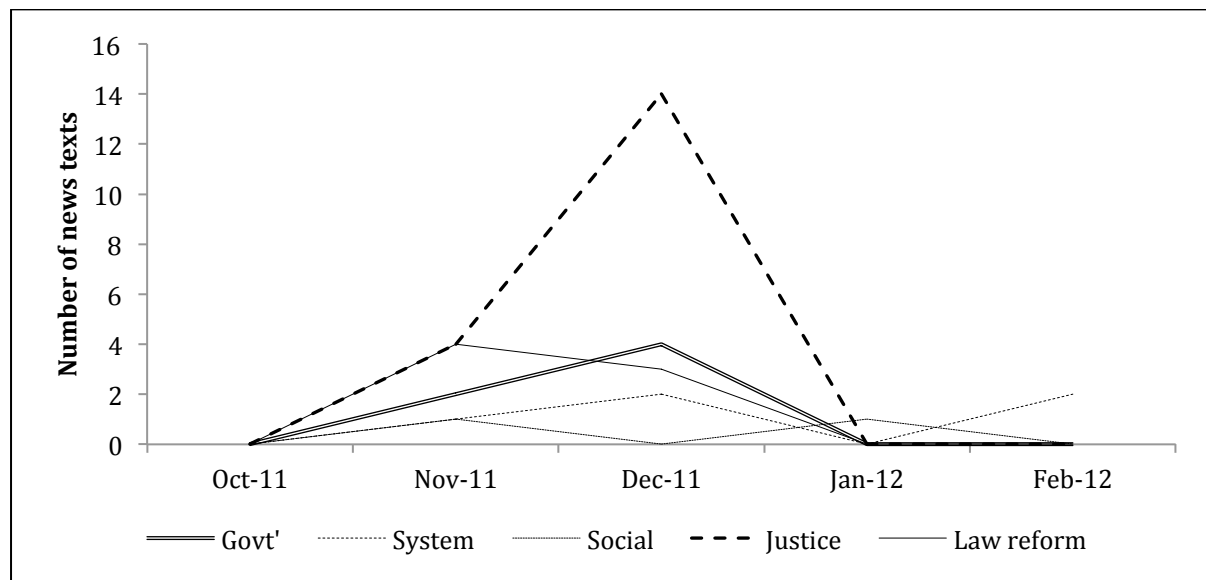


Figure 7: 'Problems' in Trial phase (Oct 2011 –Feb 2012).

Problem framing by news media does not appear to entirely explain how news coverage of a controversial criminal matter can become politicised. This chapter has described how journalists were able to find critics of the Government to sponsor frames that focused on Government action and reaction to reports. However, problem framing described so far does not appear to fully reveal how deliberations – such as the need for law reform, reviews of the child protection system, the question of the legitimacy of Ellis's decision not to prosecute and the myriad Governmental responses – devolved into news covering allegations of there being an official cover-up. For this reason, two further schemas identified in news framing were analyzed, to investigate how news framing of a controversial subject can tip into panic.

7.4 Framing public interest

There was considerable debate about the extent to which the *Mercury* and other Tasmanian media organisations reported this case. Yet the newspaper continued to maintain that it was representing the public concern. As discussed in Chapter Two, the legitimacy and social licence ascribed to journalism rests with acting in the public interest. To suggest otherwise is to challenge the legitimacy of a news organisation.

7.4.1 *Framing the public interest*

A feature of news writing is that journalists sometimes sign-post their stories by using single words or phrases to highlight a story's news value or salience to 'justify' it. Words such as 'damning' or 'controversial' label reports as being newsworthy. Similarly, words 'shocking' or 'horrific' provide an indication that an incident, as common as a car accident, has news value. This approach to journalistic practice was analysed to observe how reporters described events in a way that justified coverage. Four possible framing devices were coded for to identify moments when reporting was 'justified' (see Figure 8).

The result of analysing the texts in this way was to observe how often news coverage was justified as representing and serving community concern and public interest (see Figure 9).

Frame	Justification	Example
'court'	Clearly identified as sourced from court proceedings	Independent MLC Terry Martin has appeared in court charged with producing and possessing child pornography (Killick 31.10.2009).
'horror'	Words such as 'horrific' or 'shock' preface description of crime to suggest its news value	The State Government has baulked at ordering a full independent inquiry into the horrific abuse case that resulted in a 12-year-old girl in state care working as a child prostitute in Hobart last year (Neales 6.5.2010).
'public interest'	Either journalist or a source refers to community interest or the public interest	This case does seem unusual by the sheer number of episodes, and by the level of public interest it was always going to excite (Brown 2.4.2010); and Mr Mason said the Attorney-General Lara Giddings should consider launching prosecutions in the public interest if the DPP declined (Killick 26.9.2010).
'moral panic'	Criticises either the newspaper or a quoted source for misrepresenting the issue	Such naming and shaming would be dangerous in a country where known or suspected pedophiles...have been harassed by angry mobs (<i>Mercury</i> , 29.9.2010).

Figure 8: Coding for 'justifier' frames (Oct 2009–Feb 2012)

Court reporting is a long-established journalism round and, especially in the initial reports of the case, the *Mercury's* reporting was presented as a routine criminal matter before the courts. When Devine appeared before the Supreme Court in February 2010, the language of court reporting soon included words 'shock' or 'horror', and phrases to sign-post that the criminal matter was unusual. It could be said that the details of the crime did not warrant these labels, but it seemed they served to justify the detail and space granted to the coverage, which appeared on, or close to, the front page. This labelling persisted for a brief time until journalists

began to justify their reporting with reference to matters being in the ‘public interest’ (Brown 2.4.2010), ‘community interest’ (Brown 22.7.2010) or leading to ‘public outrage’ (Neales 28.7.2010). This phrasing appeared to indicate when this case moved from a criminal matter being dealt with by the courts to a situation requiring a Government response to public concern. This ‘public interest’ frame persisted throughout the study period, and peaked during the Justice and Politics phases. Notably, it was also present during the Trial phase, which suggests the extent to which the criminal proceedings were framed as not only a question of law, but also a matter for public deliberation and comment. This process by which the newspaper attached its reporting as representative of the public interest was also attacked and the discourse associated with contemporary moral panics soon emerged.

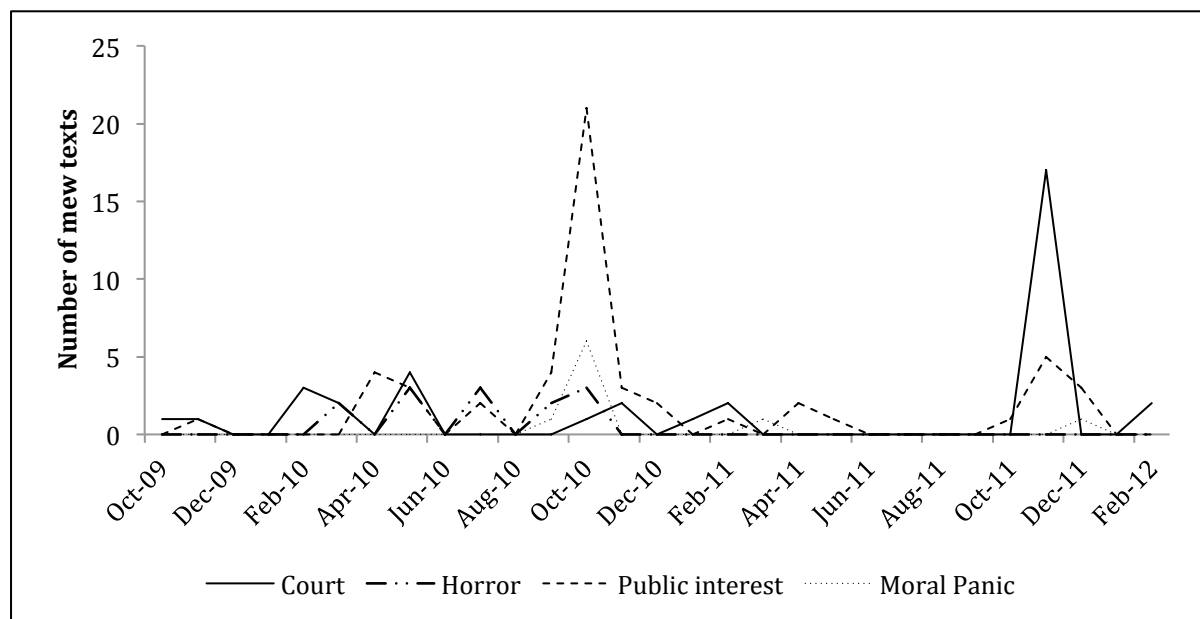


Figure 9: ‘Justifier’ frames (Oct 2009–Feb 2012)

The media’s justification of ongoing coverage on the grounds of an outraged community and public interest was maintained throughout the case and the inverse, that is, the accusation of media overstepping their role and indulging in a moral panic, was given less coverage. This perhaps is not surprising; the newspaper was

equally reticent to reflect on the role of its advertising in the crime. However, framing media and public interest in a binary of justified/moral panic was a particularly potent combination when used with ‘government problem’ and ‘justice problem’ frames. The newspaper could report on any dismissal of concern as an indication of the speaker being out of touch with the public. This not only worked to continue the pressure and criticism, but also served to legitimise the *Mercury* in an environment that was at times hostile to its coverage. Framing the coverage as serving the public interest also located the public as an actor in this mediated deliberation. For instance, one letters-to-the-editor correspondent wrote:

I felt very angry when Mr Ellis accused those who have concerns about this case as baying for blood and placing us in the category of rogue vigilantes. If anything the *Mercury* correspondents who have expressed their concerns are baying for justice in a case that has aroused horror and disgust in the community. (Sianski, 5.10.2010)

One of the aims of this study is to determine how high-profile crimes become politicised and a key aim is to determine at what point media coverage of social problems tips to moral panic and fear (McNair 2006). Having established how the ‘justifier’ frames were used to justify the *Mercury’s* coverage of the crime, which also consistently cast the Government as the problem, it was also necessary to locate how this process tipped from representing public concern to allegations of government corruption. To address this, frame analysis was undertaken to determine how official statements and outcomes were framed in media in terms of degrees of satisfaction. The findings of this approach will now be described and discussed.

7.4.2 *Framing controversy*

This case was made up of a cascade of events that included internal inquiries, court cases, government reports, mediated allegations and rumours, and official announcements. Driving much of these events was the accountability work of

journalists which frequently framed these stories as requiring Government action. As described earlier, the success of the 'political problem frame' can be explained by its sponsorship by the Liberals and other critics of the Government, who used the opportunities presented by the news interest in crime for visibility and mobilisation. Amid the criticism, however, were opportunities for authorities to respond. Indeed, it could be argued that there was a serious and adequate response by authorities to the crimes; the two adults who sold the child were given long prison terms, at least two independent reviews into child protection were conducted, the DPP had the Memorandum from police published twice in the state's dailies, and the defence of mistake as to age was under review. These actions did not appear to assuage public interest and concern about this case. Instead, it appeared that irrespective of action, the Government depicted as not only unwilling to act, but also apparently engaged in some sort of deliberate cover-up. Central to this study is the question of how this case contained elements of panic. Answering this question requires investigating how journalists framed not only events but in particular, the official response to them. Drawing upon Ettema's (2007:145) observation that news reporting requires not only reason-giving, but also giving reasons that satisfy, the coding for the frame analysis included observing the implied 'satisfaction' with official announcements and other outcomes (see Figure 10).

Frame	Response to outcome	Example
'support'	Satisfaction with the official outcome without criticism	The last word on this matter should rightfully go to Giddings, a voice of reason among the hysteria. ... Why is she the only one who gets this? (Barns 4.10.2010)
'moral panic'	Not only support for outcome, but also criticises opponents as misinformed or otherwise attempting to push their own agenda	Ms Giddings said yesterday she believed misinformation peddled on Facebook, Twitter and the internet had played a big part in the defeat of Education, Children's and Police Minister Lin Thorp (Neales 10.5.2011).
'injustice'	General dissatisfaction, but without reference to political interference.	Mr Mason is also disappointed the Government has not acted on his request for greater powers for the Commissioner for Children (Neales 11.10.2010).
'secrecy'	Dissatisfaction with outcomes that reference a lack of transparency and/or political interference.	'Who is the Government trying to protect here with its secrecy, the minister or the girl?' Mr Hodgman said (Neales 5.5.2010).

Figure 10: Coding for 'outcome' frames (Oct 2009–Feb 2012)

These 'outcome' frames did not appear in all of the stories and of all the frames used in this analysis, these are the most interpretative of the frames because there were few key words to search for. However, such an analysis seemed a valuable exercise in trying to determine how news coverage contributed to this case being so controversial. In the first two phases of the study, that is the Crime and Justice phases, the dominant frame used by the *Mercury* was dissatisfaction (see Figure 11). This was expressed in terms of the perceived lightness of sentences given to Devine and the girl's mother and also in relation to the DPP's decision not to pursue more charges. Of note, this general sense of injustice, unfairness or dissatisfaction continued throughout the Justice phase, as the DPP and the Government attempted to explain the reason for the police investigation to finish before there were more

arrests. The 'secrecy' frame was noticeably less than the 'injustice' frame, with support for official decisions and disapproval from Government critics coming third and fourth. All of these frames track similar trajectories, but notably shift in the Politics phase when the former Children's Commissioner entered the political sphere by challenging Minister Thorp's seat in the election. At this point, the injustice frame that alludes to a general dissatisfaction with outcomes plummeted, while the 'secrecy' phase became the dominant frame. The frames that either support or criticise the coverage in terms of moral panic continue to mirror the 'secrecy' frame.

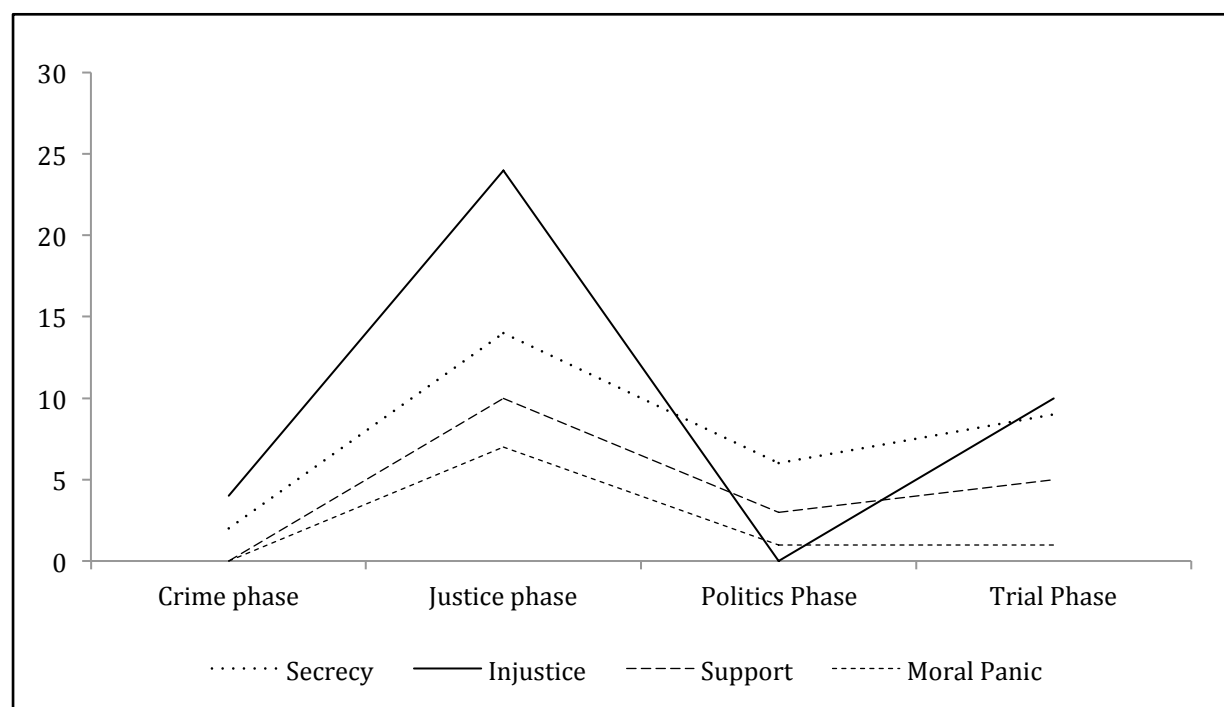


Figure 11: Outcome frames (Oct 2009–Feb 2012)

By the time Martin appears in court at the end of 2011, the 'injustice' frame returns and notably, the 'moral panic' frame is the only frame that declines. What do the trajectories of these responses tell us? Firstly, this analysis reveals that the *Mercury's* coverage sustained a critical and negative approach to both official announcements and outcomes more generally. As described earlier in this chapter, the newspaper generally reported Government announcements and the outcomes of

court proceedings in a negative way. While this negativity was expressed in terms of dissatisfaction, it was also followed by claims of lack of transparency and accountability throughout the period, including the controversy immediately following the DPP's decision. This controversy around transparency, and claims that the government was conspiring to cover-up its actions over matters in this case did not rise to dominance until debate about the case shifted into the political contest. The trajectory of this shift (Figure 12) shows that pressure on the Government and other authorities to respond to criticisms and be seen to act was present from the time of Martin's arrest, but it also shows a radical shift in tone during the election in the early half of 2011.

7.5 Discussion: Finding the story in social problems

Revealing news media's relationship with social problems – that is, the distance between reality, textual representations and public opinion – is central to investigations into the idea of moral panic. In recent years, this theoretical approach to media has been absorbed into popular discourses around journalism and newsroom practice to the extent that panics have become a genre of news reporting in which media engage with an event in order to discuss wider issues (Cottle 2006b; Goode 2000; Ungar 2001; Young 2011). While the conditions required for such panics have been thoroughly interrogated, even exhausted, the role they play in presenting opportunities to promote stability or alternatively create the conditions for lasting social change are less understood (Cavanagh 2007; Cohen 2011; Critcher 2009; Killias 2006; Lumby and Funnell; 2011 McNair 2006). Questioning how news media can report on social problems in a socially useful way implies that the benefit of mediatised debates about so-called social problems is variable. The question then, is what kind of news conforms to the criteria of useful, and when does it descend into negative and even hostile and obstructive reporting? The role of news reporting of the case of the 12-year-old girl was criticised and contested in Tasmania because of

the way discourses around the case agitated for political action, legal reform and other hall marks of social change that, in doing so, also appeared to threaten political stability and public faith in the judicial system. In order to establish the nature of reporting, this analysis sought to determine how journalists framed the news about this case as a series of problems required accountability and address.

The *Mercury* newspaper framed the crime as a series of problems caused and/or requiring a response from various sectors of civil society. However, as the analysis shows, the *Mercury* consistently emphasised the Government as the site of blame and required action. By drawing on sources who criticised the decisions being made as a political problem, the newspaper was able to maintain the story in the news, as well as assert its legitimacy as a news source by showing its willingness to challenge the Government. This process included framing these debates and issues as problems already established in the newspaper and the broader public domain at the time of the crime. The news access granted to critics and this process of framing also served the Government's critics who used the controversy to apply pressure to the Government.

These observations conform to Altheide's (2002) description of the 'problem' framing process. However, unlike Altheide's assertions that such framing is a representation of social fears and anxieties, the problem framing in the Tasmanian coverage appears to have been driven, in part at least, by journalistic sense-making and accountability work. This is an important distinction between news practices that seek news frames that cause alarm at the risk of distorting public understanding and the news reporting that seeks to explain and to hold account that leads to public concern and even outrage.

The problems were framed by granting some claim-makers and perspectives more news access than others, and by reporting perspectives with varying degrees of acceptance or scrutiny. For instance, comments made by Mason appear under-scrutinised, even when he was operating in the political field. It is

difficult to determine from content analysis alone whether and to what extent this framing was determined by sources or the paper's own biases. For instance, how much of the *Mercury's* apparent hostility towards the Government was a result of journalistic accountability work – what could be described as genuine inquiry – compared with that by the personal and political agendas of sources?

The analysis showed how some frames and their associated debates were more successful in remaining in the media than others. For instance, the debate around Tasmania's defence of mistake as to age appeared to gain little traction when it was framed as a 'justice problem', but the defence received more coverage when it shifted to being framed as a 'government problem'. This raises a number of questions regarding what influences shifts in news framing. While textual analysis can show the people and events that make news, it is a poor tool for investigating the processes that underpin visibility, invisibility, and in some cases disappearances of information and perspectives in news coverage. Research into media framing of social problems has described how news coverage constructs social problems (Altheide 1997, 2002; Boykoff and Boykoff 2007; Cohen and Young 1981; Gusfield 1989; Hilgartner and Bosk 1988), but less is known about the underlying influences of that construction. Understanding the practices of journalists and their sources in the construction of social problems is important. To understand the *why* as well as the *how* in newsmaking is an important step in determining the extent to which socially useful reporting is a matter of journalistic practice alone, or if other practices and structural limitations are informing their choices.

Breaking up a period of intense and multifaceted debate into four distinct phases in media flow, this chapter has shown that coverage of this case was dependent, and triggered by, events external to the newsroom, rather than by journalists initiating stories. These stories were found to be mostly framed in terms of requiring political action. By representing the Government's response in terms of a failure of accountability, the *Mercury* was able to apply concerted pressure on the Labor

Government and, in the process, assert its legitimacy by claiming to represent public frustration with political and legal elites. This struggle for legitimacy went as far as to frame any unwillingness to respond to the claims in the news as the unwillingness to respond to community concern, which amplified community concern about perceived injustice to outrage over assumed secrecy and impropriety. Without ongoing on which to report and the willingness of sources to comment, news coverage would have been considerably reduced. This analysis revealed something of the trajectory of criminal matters becoming political controversies. However, this analysis was not able to explain the professional practices and personal ideology of journalists or the struggle for visibility by those outside the newsroom seeking to influence coverage. The following chapter seeks to identify and explain how journalists and sources negotiated the various opportunities to report on these matters, traversed the ethical and legal obstacles of covering a sex crime and pursued rumours that, if verifiable, promised to be politically explosive.

8. MAKING NEWS:,JOURNALISTS AND THE, LAW

8.1 Introduction

Identifying harms done to others as an injury suffered by our collective whole is an important feature of liberal democratic societies. Addressing harm as part of a wider remit of justice is also a fundamental principle on which many state institutions are based. News coverage using ‘problem’ frames - which identify perceived wrongs, assign causal and remedial agents and call for action - is a common form of journalism. The perception that justice was not satisfactorily served was variously framed in Tasmania as a failing of society, the legal system, state institutions and the government and the ‘government problem’ frame dominated. This analysis indicates that the crimes and related matters were politicised in the *Mercury*. The question remains, though, as to what led to this emphasis on Government and what does this politicisation say about journalistic practice and the wider communications environment in which they operate?

Frame analysis can tell a lot about how organisations determine what makes the news, however, journalists are also dependent on two key features in news that are largely external to newsrooms and not easily identified by analysing texts alone. This chapter looks beyond the *Mercury’s* coverage to investigate the factors that contributed to the trajectory of these ‘problem’ frames and aims to more fully understand how the news framing process involved the interaction between journalists and their sources. Drawing upon interviews with Tasmanian journalists, lawyers and other actors, as well as from secondary documentation, this chapter investigates how journalists made sense of news values, negotiated news access and navigated the complex legal issues associated with this case.

8.2 News values and news access

News reporting is criticised for depicting crime in terms of singular events rather than in the context of the broader social conditions that contribute to them (Fox 2013; Ungar 2001). It follows that any analysis of a crime labeled as a moral panic must consider the way in which news coverage engaged with questions about the social conditions that contributed to the crime occurring. The framing analysis found the 'social problem' frame did not feature prominently in the *Mercury's* coverage. This raises questions about what prevented news coverage discussing the wider social conditions that contributed to the exploitation of this child.

News media ran stories that used the 'social problem' frame soon after Devine was sentenced (Brown 2.4.2010). People reflected in news reports, opinion pages and talk-back radio about what the crimes revealed about Tasmanian society. The extent to which this kind of public conversation informed professional judgment is described by one actor who recalled how people contacted her office:

I got calls and emails from interstate and a whole lot of people who just wanted to reflect on what it meant, most of them looked at their own grandchildren and kids and some of them had had previous experience with sexual assault themselves and these where the things they wanted to reflect on and around. (Actor, Interview, 2012)

This interest was also described by journalists. For instance, one reporter recalled the mood in the newsroom during the court proceedings involving Devine, the child's mother and Martin:

Everyone was very interested, just like members of the general public, in the ins-and-outs of the case and what had actually happened, because it dripped out...So everyone was interested in how old the girl looked and how on earth you could prostitute a 12 year old and who done it and, of course, the Devine name is pretty infamous in Tasmania so it was more of a human curiosity rather than a journalistic take, so basically the court reporter would come

back and we would all cross-examine [the court reporter] to find out what [they] had found out and what this person looked like and what the mother looked like. And how was Terry? (Journalist, Interview, 2012)

Other journalists, lawyers and actors were less certain of the news value of the story or the perception that the case had captured the public imagination. For them it was a horrible crime, but one with little news value beyond being a part of the court reporter's round. As one journalist said:

It did not occur to me at that point to go sniffing about ... It was not something people were talking about in pubs to me ... Maybe it's a tricky topic, talking about a teenage girl being sold for sex, but maybe it's easier talking about indigenous issues and land rights and the Brighton Bypass⁶⁰ ... (Journalist, Interview, 2012)

And:

It felt like we were airing someone else's dirty laundry. There was a young girl who was a victim ...and it felt like we were only going to make it worse for her. Like how bad was it going to get for you that you were on the front cover of the paper where your mother and your stepfather-like figure sold you for sex? (Journalist, Interview, 2012)

The divergence over the news value of the story was contested in the media itself, with news organisations reporting debates about whether there should be any debate or coverage at all. On ABC radio, Sexual Assault Support Services chief executive Liz Little described news coverage on this issue as providing an

⁶⁰ The Brighton Bypass was the controversial construction of a highway in Southern Tasmania during 2009–2012 that was delayed because of concerns that the Government had failed to adequately assess the road corridor for Aboriginal heritage or consult with indigenous stakeholders.

opportunity for social action on the issue of child sexual exploitation that was not yet 'mainstream':

The positive thing that is coming out of this is that ordinary people in the community are now saying enough is enough...Either the government says to the community of Tasmania that we are engaged in trying to seriously address this issue or, I believe, the community will organise and speak out and hold our politicians and our senior law officers to account. (*ABC Mornings* 8.10.2010)

Similarly, journalist Sue Neales, writing in her regular *Mercury* column (4.10.2010) defended her reporting as being representative of public opinion:

It is fair to ask how could someone in the small Hobart community not have known exactly what was happening to this poor young girl in August and September last year? ... In this regard, the outcry contains more than an element of outrage and dismay at the state of Tasmanian society. (Neales 4.10.2010).

However, in his regular *Mercury* column, barrister Greg Barns (5.12.2011) challenged the newspaper's sustained coverage:

What disquiet, by the way? A few obsessive law-and-order junkies who get their quotes in the media? Or has Goodwin carried out robust surveys of Tasmanians so that she can make such a pronouncement? And if there is disquiet is it among people who know all the facts of a case or just those who believe what the media reports about a particular matter? (Barns, 5.12.2011)

Two elements appear to be working in these assessments of news values. One is a perception that either people were talking, or not talking about the crimes, which implies a degree of subjectivity. Depending on the social and professional circles and personal interests of the interviewee, there may well have been public discussions about the case – or not. Also negating the news values of the story was the risk that reporting will cause more harm than good. While journalists have long found news

value in scandals, the journalist quoted above makes it clear that 'airing dirty laundry' had no news value when it could harm an innocent person. These disparate comments show how gauging public opinion, and therefore tailoring news to what audiences want, is far from being fixed and formulaic, but is a source of debate and contest among journalists, actors and audiences. Within this contest rests the legitimacy of the newsmaking process itself: if news organisations present stories with questionable value as 'news', or alternatively fail to report events deemed to have high news value, then the organisation is accused of failing to do its job. How did journalists approach framing these questions within the 'social problem' frame and what was the value of these questions in terms of news?

This matter was notable as a socio-legal news story because of its connection to the state's controversial sex industry laws. Devine was the first person prosecuted under the *Sex Industry Offences Act* and his sentencing hearing was also the first child prostitution case to come before a Tasmanian court (*Tasmania v Devine*, CoPS, Evans J, 25 March 2010; Glaetzer 26.3.2010). As such, the news value of the case should not be understated, as this lawyer suggests:

Well, I have been in the law for a long time and I have seen very little in the way of prosecution of people in the sex industry. You just don't see very many cases of pimps and perhaps that is why it was exceptionally outrageous. We had the mother of a 12-year-old and some bloke being prosecuted. I can think of very few cases, actually nothing like this in Tasmania, and I suppose there must have been child prostitution and underage prostitutes, but that it is just not something that comes to the surface in the courts. (Lawyer, Interview, 2012)

Tasmanian journalists did not emphasise the historic significance of this case, but nevertheless found salience in the sexual element of the crime, thus locating it as a story of prostitution or sex, rather than something closer to child welfare. For instance, one journalist regarded curiosity about prostitution as a news value:

People are interested. Sex is an interesting topic...and people are naturally interested in prostitution, whether it's about who uses prostitution, who goes into prostitution, what's it like? You have TV series and prostitutes writing anonymous books and so on and it is just a part of life you do not normally see, and it is this 'behind closed doors' view that people are interested in...I think it's legitimate interest. People are interested in things that they do not know a lot about and they don't have easy access to. People are interested in death because we don't know about what happens, and people don't know what happens in a brothel, so it is curiosity, I think. (Journalist, Interview, 2012)

The news value of sex and prostitution can be seen in reporting, which is particularly evident in early 2010 when the details of the crimes first emerged. The *Sunday Tasmanian* ran a number of stories featuring comments by sex workers. The revelation that the child was a ward of the state was a strong indication that she came from a background of disadvantage, however, any discussion around the correlation between poverty and the sexual crimes committed against the child were barely visible in the news coverage. This might be a question of individual professional practice. For instance, the *Mercury's* Sally Glaetzer only briefly mentioned the role of disadvantage halfway down her report (Glaetzer, 23.3.2010) of Devine's sentencing:

The horrific prostitution business began last July after the girl's mother complained to close friend Devine of having no money.

In contrast, Daniel Brown, the reporter who covered the mother's appearance, began his story with a vivid description of the dire circumstances of the family:

A GLENORCHY mother prostituted her 12-year-old daughter to more than 100 men so she could pay off her home loan, buy cars and get a window fixed, a Hobart court has heard.

Just two months before the crimes occurred, the mother appeared in an Adelaide court as a victim of sex crimes herself, dating back to when she was nine. (Brown 11.5.2010)

Although the mother's sentencing hearing revealed the family's dire financial situation, news media did not report on social attitudes to children and disadvantage for long. This could be partly understood as a sign that Tasmanian society, like other jurisdictions, has sedimented its condemnation of child neglect and abuse in law and policy (Nelson 1984). In that case, it would make sense that the news interest shifted to the institutional response of the child protection system and the courts. Mediatized discussion quickly turned towards how those agencies responsible for the child were to blame. The interviews identified a number of strategies at play during this case. These strategies included: anticipating the perceived news values of events and assuming news interest was not relevant to an individual's or organisation's interests; choosing the right time to participate; and using the threat of going to media as part of a wider agenda.

The Tasmanian agency responsible for the child was the Child Protection Service which was within the Department of Health and Human Services. Child workers alerted police to the child's abuse in October 2009 after the abuse had stopped because Devine thought it was 'too risky' (Brown 22.7.2010). Child Protection had months in which to prepare a response to journalists when details of the case went public during Devine's sentencing hearing in March 2010. However, comment from either government or non-government welfare organisations was largely absent from reporting. The reasoning behind this strategy is described by one actor:

Initially we were not proactive, we were entirely reactive and we didn't really get much of a run because what we were saying was not the story being told. I disagree with your earlier comment that there was real news value. I think for quite a while there was no news value in it at all. The word prostitute, 12-year-old and politician, that was all media wanted to get across ... It is a second

round of stories, when the media are looking around for the next angle ... when they can pick some of that stuff up. (Actor, Interview, 2012)

The idea of media interest coming in 'rounds' was supported by another actor, interviewed because of their involvement in raising the social importance of this case. This actor also described a communications strategy based on the assumptions about journalistic interest:

The first of the responses by people was 'shock, horror, what's happening to our children', and then the second wave 'why are our institutions, like child protection, why don't they work?', the third one was 'shock, horror, there is something dirty here and it is being covered up', and the fourth one was 'shock horror, our justice system isn't working'. (Actor, Interview, 2012)

This description of news interest as 'waves' notably corresponds to the news phases identified in the frame analysis (see Figure 3). The communication strategies of those interviewed appeared to be based on assumptions that, in the first instance, it was journalistic interest, even instinct, that would set the news agenda around what was said in court. Further, that it was only after this 'first wave', when journalists would begin to look for other perspectives and angles, that those in the social and welfare sector might be able to attract media attention.

The opportunity to be heard in these latter stages appears to be based on two factors: on-going interest in the story and news access. One actor described this process as one of give-and-take with journalists, whereby they would give journalists what they needed during the first round of news interest before 'calling in favours' when journalists were looking for follow-up stories:

Well, there are so many column inches and the rest of it to fill, I will get calls from journos who have run out of ideas or are working on the weekend and they need a story so I will give them a story but expect something back quid pro quo. It does not always work

because you have bloody editors sitting in the way, but you know if I need a story pushed I can go back to those people. It is a relationship thing and, while maintaining a relationship, you can be as honest and tell them that we need this thing to keep the strategy going. The papers certainly are better at that in terms of having to fill tomorrow's paper. Sundays in Tasmania, well particularly Saturdays and Sundays in Tasmania, nothing happens! (Actor, Interview, 2012)

Journalists also acknowledged the mutual benefit of such a communication strategy because of a perception that there always 'slow news' days when they needed stories. For instance, one journalist, reflecting on why a particular source was used in a story recalled contacting one source because they had to generate their own stories:

There are not that many stories around Tasmania, so I was really scrapping around for stories and I was looking for an angle. Obviously the community was interested in the case so I was looking for a new angle that had not been covered. Why did I find [name of source]? Maybe I just went thought the contacts, or potentially they rang up and we got talking, or they were quoted in another story and I thought there is someone who is talking from that angle. (Journalist, Interview, 2012)

The interviews revealed that actors had communication strategies based around when their message had the most likely success of being noticed. For instance, they talked about letting the first wave of interest pass before utilising media interest for their purposes, which also included not responding to journalists. One actor described not always seeing the merit in contributing to mediatised debate, especially when their organisation was unlikely to benefit from comments in the news:

I've got to keep asking myself 'is this the right time politically to actually get some sort of change?' So one of the issues that I am always looking at with media, that if it's a self-initiated process, is to

ask myself 'if this is the time and do I have the time to do the policy push to follow through?' because if you create that storm in the public environment in order to try to get a policy or legislative change then you've got to be in the position to put the hard yards behind it and follow through with the policy. There is absolutely no point in going out there and creating aggravation for the government for the sake of creating aggravation, even if it is an important issue and the aggravation is about where you want to go. So to answer how do I use the media: hopefully strategically and how much time I spend on media depends on what I am doing and how I've decided to go about what I am doing. (Actor, Interview, 2012)

Another contributing factor to communications strategies that avoids journalists is the role internal and official inquiries serve in postponing public announcements. In this case, there were a number of internal and official inquiries, such as the independent review undertaken by the Children's Commissioner (Mason 2010) and the report by the Select Committee on Child Protection (Parliament of Tasmania 2011). These inquiries, while important in themselves, resulted in journalists' questions about Government and institutional accountability sometimes going unanswered on the grounds that comments would not be made while inquiries, that took months to complete, were ongoing. Delaying public comment until after such processes can either stymie debate or create a buffer to protect deliberation from the torrent of opinion and demand. Communication strategies also, at times, included using the threat of talking to journalists. A degree of institutional soul-searching, away from the media gaze and some actors described how the threat of going to the media was used to get government and institutional stakeholders to the table during these periods. One actor mentioned that industrial action in early 2012 led to a number of job vacancies in Child Protection Services being filled. While conceding that it was difficult to determine if media played a role in ensuring this outcome, did say that:

The fact that this case gave the community a very broad understanding of the problems in child protection would probably have helped. (Actor, Interview, 2012)

Another actor described their communications strategy used news media, but taking care 'not to run to it too quickly' because it was important to resolve problems internally, because 'general public confidence' in state institutions is important and using the news to 'air your dirty washing' was potentially very damaging (Actor, Interview, 2012).

However, the role of communication strategies that strategically avoid media attention does not entirely explain why non-government welfare groups, which historically have acted to promote the welfare of children and the disadvantaged, were conspicuously silent in news coverage. For instance, the dataset of *Mercury* articles shows the only references to religious organisations in the coverage was in relation to banning prostitution, rather than calling for political action in relation to children's welfare. For instance, the Tasmanian branch of the Australian Christian Lobby released three press releases that mentioned the crimes against the girl: one that urged the Government to re-examine Swedish prostitution laws (Australian Christian Lobby 2010a); another that said that 'genuine solutions to stop child prostitution in Tasmania' would be 'swept under the carpet' if the government did not re-appoint Mason as Children's Commissioner (Australian Christian Lobby 2010b); and a third supporting the Government to remove the defence of mistake as to age (Australian Christian Lobby 2012c).

In the interviews, both actors and journalists reflected on why the emphasis on prostitution gained more traction than that of child welfare and disadvantage. Reasons included the ethical, legal and practical difficulties of putting a human face on child abuse and poverty. Finding a person willing to identify as being disadvantaged or a victim of sexual assault, especially in a community like Hobart where 'everyone knows everyone' could be difficult (Actor, Interview, 2012). This

apparent impasse between journalists and social welfare groups, who have historically advocated for children in the public sphere, appears to have led to an emphasis on the crime as one that was specifically child sexual exploitation and prostitution. Organisations associated with child sexual abuse, such as the Sexual Assault Support Service (SASS) and the national child abuse organisation Bravehearts and its Tasmanian chapter, and local groups Beyond Abuse and STAMP (Stop Abusers, Molesters, and Paedophiles), did have a media strategy that included talking to journalists and, at times, they were able to broaden the discussion from being one about sex. For instance, Bravehearts was the source of one story (Mounster, 11.6.2011) that linked the crime to a broader Tasmanian conversation about the extent of child abuse, including the link between child abuse and ‘many of the community’s most rampant, soul-destroying problems, such as non-clinical depression, alcoholism, dysfunctional parenting and drug abuse’.

There were also limited attempts to galvanise a societal response to the crimes using social media. At least two Facebook pages occurred during the study period. One titled ‘8 years jail for pimping 12yo Australian girl to 100+ men is not enough’⁶¹ (Soward and Johnstone 2010) was started in March 2010 by Launceston City Council Alderman Rob Soward and youth worker Amanda Johnstone, who told the *Mercury* they had set up the page because ‘we want the Government to put more money into support services for social welfare, drugs and mental health’. On the website they also claimed:

Family members of the victim have also been in touch, and some very thankful that we have been able to pass on crucial information to the Police. At the time of this media release, we have 11,000 people who have joined our group in just three days. Providing them with encouragement and information of the correct people to contact is our priority. As a publicist I have worked with some of the

⁶¹ Devine received a 10-year sentence with an eight-year non-parole period.

biggest brands, celebrities and charities in Australia, I know this is my duty to give this injustice the media exposure it needs to create change and potential law reform. (Soward and Johnstone 2010)

While this Facebook page articulates a certain view of the newsworthiness of this case as an opportunity for social change and law reform, it also claimed to have the support of the victim's family who, as discussed, were very critical of mainstream media.

Despite attracting media attention and public support, the group did not achieve its aim of organising a rally to protest against the DPP's decision, which led to one member describing Soward's involvement in setting up the page as a cynical effort by a politician to attach his name to a politically salient cause. Attempts to organise a rally using social media by sexual assault support group Survivors Australia also appeared unsuccessful. A number of websites and blogs published stories about this case but these consisted of mainly reposted news stories from news organisations that attracted little comment. An exception to this observation was the blog run by writer and feminist activist Melinda Tankard Reist (Melinda Tankard Reist 2010). The news treatment of sexual crimes is bedeviled by serious ethical and legal questions. These warrant close attention because it was the treatment of the information about the girl in question that attracted the most public and professional condemnation.

8.3 Making news from criminal proceedings

Journalists and lawyers have an uneasy relationship in Tasmania and this tension is recorded in other jurisdictions (Breit 2011; Gies 2008; Johnston and McGovern 2013). Lawyers were unanimous in their general frustration with how journalists represented their work. For instance, when asked about how Tasmanian media report trials, one lawyer said:

Appalling, is the first phrase that comes to mind, but I know that is probably harsh because I know they have to encapsulate a lot into a small time space but even accepting that, there are too many inaccuracies, too often... I don't think the public are getting an accurate picture of what is going on for a number of reasons, but I do accept that there are a lot of constraints such as trying to summarise things, trying to squash something into a very confined space and time. I know they are subject to sub-editorial fiddling, I know that people who ... do the reporting are not responsible for the idiotic headlines, but generally there just seems to be a high level of inaccuracy. (Lawyer, Interview, 2012)

And:

They probably don't do a bad job in the sense of inaccuracies in reporting and they are certainly not as vicious in Tasmania as they are in certain mainland tabloids and shock jock programs. Having a pretty comfortable relationship with the media helps ... [but] you still get the odd mistake. (Lawyer, Interview, 2012)

Adding to the complaints of inaccuracy was the frustration with the superficial understanding of law and courtroom processes shown in news reporting, although some interviewees were more sympathetic to the difficulties of interpreting the law for a general audience. For instance, one lawyer suggested it was unfair to expect journalists to have comparable legal knowledge to lawyers:

What, do you want to all make them go and do a law degree? I think the court reporters do know a lot ... so, I don't blame the journalists. They do have problems sometimes with suppression orders, but that's the fault of their editors who don't check it with their lawyers. They sometimes have problems with reporting complex cases, but who doesn't? I think overall they get it right...I think the headlines are probably worse than the story. (Lawyer, Interview, 2012)

This lawyer also reflected on the poor communication between lawyers and reporters as contributing to poor reporting outcomes:

I think they don't understand. They think that anything they say to a journalist is going to appear on the front page. They don't understand on the record/off the record. Secondly, I think there is arrogance, you know: 'If people don't understand it, too bad'. I have to say though, a lot of lawyers, including myself, if a journalist rings them and asks us what happened, will explain it to them. I will say 'don't quote me, but here's what's happened...' and go through it with them...You do it so they get it right because it's in your client's interests (Lawyer, Interview, 2012)

The DPP, Tim Ellis, also expressed frustration with the level of inaccuracy in court reporting:

Court reporting is usually done by the most junior person on the payroll and so all the time they were getting things wrong and these days the editorial control is thin so things are not getting corrected. They will go along and call us police prosecutors, when we are not, and you know, they will get things horribly wrong because they are on orders to follow four courts at once and go in and see five minutes of the case and report on that. They hardly ever want to get any in-depth understanding of things and seem to think they have come into journalism fully formed, knowing the lot and understanding how courts work because they've gone along and seen a bit of it. (Tim Ellis, interview, 23 October 2012)

Journalists also expressed frustration with the lawyers and those working in the courts. One journalist described the problem being partly based on the legal profession's unwillingness to 'explain how things work or why decisions are made':

There are two types of lawyer in my experience: one that calls the media for aggrandisement and another that is the polar opposite, with a disdain for the media and who is not interested in assisting the media by explaining the issues. Of course, there are some in between, but certainly it is dominated by two polar opposites none of which is very helpful. (Journalist, Interview, 2012)

Another journalist described the courtroom environment as hostile for journalists because of the difficulty of asking questions about proceedings (Journalist, Interview, 2012). The absence of media officers at the Supreme Court leaves reporters to contact the court registrar or judges' associates for clarification. In his submission to the Tasmanian Law Reform Institute (2013:3), senior *Mercury* reporter David Killick noted the absence of court appointed media officers and a reluctance by courts and the DPP to engage with the media as a problem for journalists.

The tension between the legal and journalistic worlds was not limited to the courts. The calls for law reform in this case, which at times appeared to be a hybrid problem frame that combined the elements of the 'legal problem' and 'government problem' frames, was another example of the tension. There were calls for a review of several areas of law: the provisions around sex with young people and the provisions protecting the anonymity of victims of sex crime. In the former, coverage campaigned for a change in laws to reflect community standards and in the latter, the legal profession challenged journalistic practices in relation to reporting on victims of sex crime. Both of these were subject to review by the Tasmanian Law Reform Institute (2012b, 2013).

The trauma of appearing in court as a complainant of a sex crime has led to laws in many jurisdictions preventing news coverage from identifying victims by name or by any detail that would identify them. Complaints made against the *Mercury* and *ABC News* about their reporting of the case led to a review of the relevant laws by the Tasmanian Law Reform Institute (2012b). These concerns were raised in relation to the *Mercury's* coverage of Devine's sentencing hearing in March 2010 in which the details of the crimes were explicitly described in court and news coverage. For instance:

On Friday, the mother of the girl, who is riddled with sexually transmitted diseases and too upset to talk about her ordeal, was jailed for 10 years (Duncan 16.3.2010)

And:

The girl was examined and diagnosed with STDs including genital warts and chlamydia. 'She's likely to have serious psychological distress if not problems as a result of this,' Mr Coates told the court. (Glaetzer, 23.3.2010)

As with the discussion on news values, the ethics of using this kind of detail was debated in news rooms and opinions were divergent between journalists. One journalist defended including the consequences of the crime on the girl's mental and physical health in reporting:

So was it salacious? Well there was a lot of harm done to this girl, but this was just extra harm and she's been damaged by this...It's just about how much damage that's been done rather than it being salacious... It's almost a victim impact statement. It's like, it's not just a crime, all these things have happened to her. She might not be able to have children, depending on the diseases and whether they have been treated and so on. (Journalist, Interview, 2012)

One actor reacted strongly to the suggestion that news reporting could serve as a kind of 'victim impact statement' because it gives media a kind of authority over what types of people can be cast as 'deviant' or worthy of care (Actor, Interview, 2012). Some journalists raised concerns that the child in question was overlooked in favour of finding the next scoop. For instance, one journalist said:

I think my view of the *Mercury* was that they could have covered that girl's life without giving that much [of her identity] away. And it was a few weeks later that Edith Bevan [ABC reporter] discovered that [the girl's] older sister had had a child to Devine, and I thought 'What are you doing? What has this got to do with anything? And why are you airing this family's dirty laundry?' The man has been charged, I think at this point he was already in jail. 'Why are you doing this to this family? ... I just think naming and identifying a

minor – well, we have to be better than that. (Journalist, Interview, 2012)

It was very difficult to talk about the crimes without injuring the girl in question, as this actor describes:

If you look at that young woman, any pretence that she is anonymous in this state or that she is not known by her peers, her schoolmates and the parents of those people as that 12-year-old is the biggest load of bullshit and that has been completely ignored and when you talk about Terry Martin in terms of the shaming he got in his sentence, this young woman has experienced much the same in the reporting. (Actor, Interview, 2012)

The nature of media reporting about this case led Tasmanian lawyer Craig Mackie, the girl's court-appointed representative, to write to the DPP in March 2010 in relation to concerns that news media were breaching laws in place to protect the identity of victims of sex crime, namely section 194K of the *Evidence Act 2001*, which prohibits the publication of information likely to identify the complainant in sexual offences cases (Tasmanian Law Reform Institute 2012c: iv). The DPP rejected this submission.⁶² Mackie, with the support of the Children's Commissioner, referred their concerns to the Tasmanian Law Reform Institute which undertook to investigate what information was covered by section 194K and whether the provision 'strikes the appropriate balance between protecting victims of sexual assault and the paramount public interest in open justice' (Tasmanian Law Reform Institute 2013:v). The issues paper that began this review (Tasmanian Law Reform Institute 2012a) described the justification of the current laws to protect victim anonymity in news reporting because 'the media has a tendency to report cases of sexual assault ruthlessly and salaciously, with little regard to the harm this may

⁶² The DPP did successfully prosecute the *Mercury's* editor Andrew Holman and deputy editor Martine Haley for identifying sexual assault victims on two separate occasions in January and then July 2012 (*Tasmania v Holman*; *Tasmania v Haley*).

cause to complainants’ (Temkin 2005 in Tasmanian Law Reform Institute 2012a:7). Mackie supported this perspective in his submission: ‘It’s hard not to believe the sale of newspapers is considered more important than the anonymity of a complainant’ (Tasmanian Law Reform Institute 2013:2). This interpretation of journalistic practice was contested by media law academic Mark Pearson who argued:

It is ... a mistake to view this story ... as one of simply feeding a public titillation with sordid sexual detail. The story ... had the important news values of ... ‘consequence’ or ‘impact’ – many of which concern public policy benefits of the reportage of such matters (Pearson in Tasmanian Law Reform Institute 2013:2).

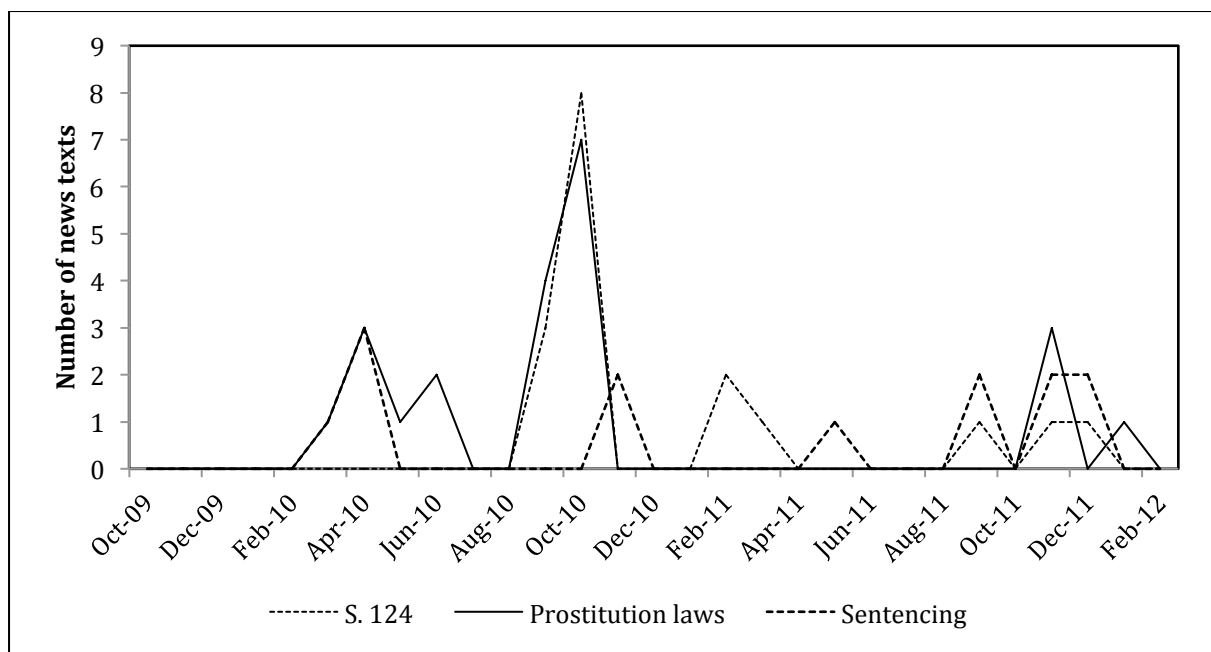


Figure 12: Legal reform frames (Oct 2009 – Feb 2012).

As well as looking at the provisions protecting victim anonymity, the Tasmanian Law Reform Institute also considered the institutional practices that impact on journalistic practice and in its final report (2013:3) observed that there would be benefits to having closer communication between the courts and media to ensure better news reporting about protecting victims because such an approach ‘ties in with the court’s interest in promoting open and transparent justice and more informed public debate about the way the justice system operates’. The Institute

made eight recommendations, but to date there has been no amendments to legislation in relation to these recommendations. The review of the laws protecting the anonymity of victims was discussed on several occasions in Parliament, but not in news coverage. Other calls for law reform included the so-called lenient sentencing for sexual crimes that, as noted in Chapter Six, was under review during the study period.⁶³ The frame analysis identified three main areas featured in calls for legal review: sentencing, the state's prostitution laws and, most specifically to this case, the defence of mistake as to age (see Figure 12). From the time of Devine's sentencing, there were criticisms of so-called lenient sentences but, these were soon overshadowed by debates about whether the state's prostitution laws had contributed to the crimes. However, it was not until the Justice phase, triggered by the DPP's announcement not to prosecute, that calls to review the *Criminal Code* began. Of all these matters of law, demands to amend the provisions in the state's *Criminal Code* stand out for being the most strongly associated with the crimes.

8.4 News, deliberation and law reform

The mistake as to age defence was first mentioned when news reported rumours that the DPP was unlikely to prosecute the so-called clients (Neales 25.9.2010b). Until the DPP announced his reasoning to not pursue prosecutions, mistake as to age was a little known defence, or at least the way it operated as a defence in child sexual assault crimes was not well understood. For instance, Liz Little, an advocate for victims of sexual assault, criticised the decision not to pursue further prosecutions, because 'there are legal grounds to charge the men with statutory rape'⁶⁴ (Neales

⁶³ At the time of writing, the Sentencing Advisory Council had completed its consultation period on sex offence sentencing and was preparing a submission to the Attorney General.

⁶⁴ The term statutory rape is a mostly American concept applying to situations where intercourse with a juvenile younger than the legally specified age of consent is considered rape because legally valid consent cannot be obtained. (Goddard et al. 2005:283).

1.10.2010). The following day, the Children's Commissioner was the first to criticise the laws and contrasted them to the more recent laws on child pornography, which he argued did not have a defence of mistake as to age (Killick 26.9.2010).⁶⁵

The decision not to prosecute prompted a lot of national news coverage over the weekend and by Monday there were calls for review of the provisions that allowed the defence. For instance, by Wednesday, Professor Caroline Taylor said in an interview on *Radio National* (Bourke, *Radio National PM*, 29.9.2010) that the defence of mistake as to age was 'basically ... a pseudo consent law':

This is a very, very clear case of the law failing to protect a child and has aided and abetted the sexual offending of 100 men against a child and that if we can't somehow garner urgent reform - I mean the Tasmanian Government should be calling itself together within the next 24 hours and making urgent reform of that kind of law and legislation to ensure that that kind of gap can never ever be relied on ever again. (Bourke, *Radio National PM*, 29.9.2010)

Opposition leader Will Hodgman quoted Professor Taylor in Parliament and said:

Premier, following confirmation yesterday by police that no further charges will be laid in respect of this case, and given widespread community concerns but also the concerns raised by the Commissioner for Children, will you commit to reviewing the relevant provisions of the Criminal Code or are you willing, as your Attorney is, to simply do nothing? (Parliament of Tasmania 2010b)

⁶⁵ The Tasmanian Law Reform Institute (2012b: 27–28) notes that offences relating to the production, distribution and possession of child pornography were introduced into the Criminal Code in 2005 but the element of fault is treated differently to other sex offences because the onus is on the Crown to prove that an accused person, such as Martin, 'ought to have known that the material was child exploitation material, an element which requires proof that he knew or ought to have known she was a person under the age of 18 years'. Nonetheless, there is a defence of mistake for these offences.

The Attorney General responded to the question by telling Parliament:

As the first law officer of this land, I also have to protect the integrity of the legal system and the law. It makes it very difficult I can assure you, in what is a very public debate built around a lot of emotion - emotion that I share. As the first law officer of the land you cannot just react to one case and throw out centuries of common law built up around defences and how our laws should operate. You cannot just throw out the Criminal Code of 1924 because of one case. At the appropriate time we will take on any issues that fall out of this, should they need to be pursued. (Parliament of Tasmania 2010b)

The Attorney General wrote a letter to the Tasmanian Law Reform Institute, dated 30 September 2010, asking the Institute to review the law in relation to the crimes. The following day, her office sent a second letter, which enclosed a copy of the redacted Memorandum from the DPP regarding the case, requesting that the Institute consider whether any other issues raised by the case required reform (Tasmanian Law Reform Institute 2012a:1). That day, Sue Neales wrote that the Government was 'facing a growing outcry' and took three days of 'arguing otherwise' before asking for the law to be reviewed (Neales 1.10.2010). There was no debate over whether the law should be reviewed, and only five working days in which the Government canvassed relevant parties, such as the Director of Public Prosecutions and the Tasmanian Law Reform Institute, to see if a review was warranted. The pressure to amend Tasmania's *Criminal Code* was frequently justified as representing the views of the public, such as a *Mercury* editorial calling to 'close the loophole' based on 'the many Tasmanians who have responded on this newspaper's website, in letters-to-the-editor and on talkback radio' (*Mercury* 29.9.2010). The Institute cited this coverage as a reason why the review was undertaken 'although some of the criticism of the law was ill-informed' (2012b:29).

As previously mentioned, there was considerable value to this case in terms of law reform that had nothing to do with mediatised debate about whether the men involved could believably mistake a child to be an adult. Notably, there were inconsistencies in the *Criminal Code* in relation to various child-specific offences which while complex, were summed up by a lawyer:

Quite apart from the more exciting questions of anonymity and so forth there were a lot of nuts and bolts aspects to the law where this case highlighted a need for reform. There was not only the Tasmanian Criminal Code and the Commonwealth Criminal Code, but there were different provisions in those two statutes... different sections creating different crimes which had different rules as to what the age limit was, as to whether the Crown had to prove knowledge of age or whether the accused had to prove mistake as to age. There were inconsistent approaches and the jury was required to take different approaches in relation to different charges. So the exciting questions of whether mistake as to age should be a defence or anonymity, they are spectacular, but there were also these anomalies that were highlighted by this case. (Lawyer, Interview, 2012)

In May 2012, the Institute commenced its review of the sexual crimes against young people with the release of an Issues Paper (Tasmanian Law Reform Institute 2012a) for public comment. Both the 'undue inconsistency' of the laws and the mediatised public outrage were identified as key drivers for the review:

There is no rational reason for such inconsistencies in the onus of proof and they create unnecessary complexity and potential for confusion. This is highlighted by the case of *Tasmania v Martin* where the trial judge had to direct the jury that for the crime of sexual intercourse with a young person the onus was on the accused to prove he believed she was over the age of 17 but for the indecent assault count the onus was on the Crown. (Tasmanian Law Reform Institute 2012a:vi)

And:

A number of commentators have criticised the current mistake as to age defence in Tasmania, claiming that it provides a loophole for offenders who should be held accountable for their actions. The fact that only one of the clients in the child prostitution case was charged, was the subject of intense media debate. While the police and the DPP were criticised for failing to prosecute the other men involved, the law itself was also subject to scrutiny. Although some of the criticism of the law was ill-informed, the case highlights a number of questions in relation to the current law. (Tasmanian Law Reform Institute 2012a:29)

While a public process, the review were almost exclusively done through established institutional networks. Of the 20 submissions listed in the report, eight came from lawyers, or organisations within the justice system, followed by non-government organisations associated with sexual assault and women's health (5), Christian organisations (3), individuals (3) and a statutory office (1). Of the twenty submissions to the Institute, 16 (majority) favoured a 'no defence age', and four rejected a 'no defence age' (2012b:52). In its final report (Tasmanian Law Reform Institute 2012b), the Institute recommended against a 'no defence age' being introduced, but stipulated that if a 'no defence age' was introduced it should be 12 years and it should be made stricter (Tasmanian Law Reform Institute 2012b:vi).

It would be a year from when the Institute submitted its recommendations to Parliament to when the law was changed. In that time, the Liberals maintained pressure on the Government; Hansard records show that the Liberals used community concern to justify their pressure (Parliament of Tasmania 2013a), and the *Mercury* continued to sponsor this position. For instance, the *Mercury* reported that Liberal justice spokeswoman Vanessa Goodwin disagreed with the recommendation

and ‘urged Attorney-General Brian Wightman to introduce a no-defence age’ (Paine, 30.10.2012). The newspaper covered the passage of the *Criminal Code Amendment (Sexual Offences against Young People) Bill 2013* through parliament (Smith, 19.8.2013; Smith, 20.8.2013) and reported that the new laws were ‘welcomed’ by the Acting Commissioner for Children Elizabeth Daly who was quoted as saying:

“It will provide a clear expression of the degree to which sexual offending against young people is condemned by our community and the extreme level of care that must be taken by a person considering whether to engage in sexual activity with a young person.” (Smith, 21.8.2013)

The review into the laws in relation to sexual crimes against young people was notable for not being a quick fix. Reviewing the law can only be a small part of the wider social and legal reforms needed to protect children. The Institute did not recommend a no defence age based on a principled approach that sought to balance the rights of young people with the rights of the accused.⁶⁶ However, the Government did not fully follow the Institute’s recommendations. Its adoption of a ‘no defence age’ of 13 years appeared to be a direct response to public and media calls to ‘close the loophole’ that enabled so many men to avoid prosecution.

During its reform process, the Government also changed another sub-section of section 125 of the *Criminal Code*, relating to anal sex, which was not recommended by the Institute because the focus of the project was the defence of mistake as to age (2012b:17).⁶⁷ The change related to the discrepancy between the age of consent for

⁶⁶ The Institute’s director Professor Kate Warner, who undertook the review, went on to argue (Warner 2013) that many of the substantive changes to criminal law relating to child sexual assault has resulted in an over-criminalisation of offence structures, such as age limits to defences of mistake and absolute liability offences, which she argues hold the risk of causing injustice. Professor Warner has been a supervisor of this research.

⁶⁷ Section 124(5) of the *Criminal Code* provided that the age similarity defenses did not apply to anal sexual intercourse. This provision was inserted into section 124 of the *Criminal Code* in 1997, when homosexuality was decriminalised and when the section proscribing anal sexual intercourse was repealed (see Tasmanian Law Reform Institute 2012).

heterosexual and homosexual sex, which was raised by Tasmania Police during the submission process. In their submission to the Institute, Tasmania Police recommended that section 124(5) of the *Criminal Code* be repealed because it discriminated between homosexual and heterosexual youths who wish to experiment with anal sex. Although the Institute had not canvassed or consulted on this change in the Issues Paper and made no recommendations in its Final Report, the 2013 amendments to the *Criminal Code* included the repeal of s 124(5) and thereby removed the age of differentiation for anal sex. This amendment was noted in the second reading of the Bill where the repealed provision was criticised on the grounds that it ‘appears to promote the myth that young persons may be ‘seduced’ or ‘corrupted’ into homosexuality if allowed to experiment when under the age of 17’(Parliament of Tasmania 2013b). This potentially controversial amendment went unreported in Tasmanian news.

So what happened to the opportunity for the crimes to trigger discussion about the involvement of children in sexual exploitation? In short, journalists, those involved in various reviews and mediatised public comment for the most part did not pursue the question of how many young people may be working in the sex industry in Tasmania and if the legislation around prostitution adequately served this problem. The Government review of the *Sex Industry Offences Act* was underway at the time of the crimes, but an explicit examination of children in the sex industry was sidestepped:

Because the Tasmanian Law Reform Institute is already considering whether the laws protecting children from involvement in the sex industry require reform, this discussion paper does not address that issue. The Tasmanian Law Reform Institute is best placed to conduct an analysis of any shortcomings in the present law and the

Government will act as necessary to strengthen existing provisions.
(Parliament of Tasmania 2012:2)

The Tasmanian Law Reform Institute's issues paper (2012a) also did not specifically call for submissions on child prostitution and its final report (2012b:86) described its inquiries into the specific question of children in the sex industry as 'admittedly superficial':

It does not appear that child prostitution in the commercial sex industry sense is a problem in Tasmania. However, it appears that 'transactional sex' (sex in exchange for cash, favours or drugs) is not uncommon. The Institute is reluctant to state a firm view on this issue as it did not invite submissions on the question of whether there should be a specific offence which criminalises the client of a child prostitute. (Tasmanian Institute of Law Reform 2012b:86)

Of the two reviews into the sex industry in Tasmania, neither addressed the question of transactional sex or sexual exploitation of young people and, despite some journalists in interviews for this study arguing that the news value of stories about prostitution were high, there was little written about young people being involved. This was despite one former madam telling reporters that she had heard rumours that an underage sex worker was working in Tasmania, but had assumed she was 16 or 17 (Martain and Duncan 28.3.2010). This case showed the apparent discrepancy between the legal age of prostitution and the socially acceptable, as opposed to legal, age of young people to be involved in the commercial sex trade.

Martin's trial revealed something of the fluidity (*Tasmania v Martin*). Witnesses included a police officer and a child protection worker who had met the child and confirmed that she did appear older than her 12 years. However, they suggested that her apparent age was more like that of a 15 year old. This discrepancy between her actual age and the age she appeared was noted by Justice David Porter in his sentencing comments:

The evidence shows that reasonable grounds existed for thinking that the complainant was about 15, possibly 16 years old. Both investigating police officers initially mistook the complainant for her 15 year-old sister, and even when properly identified, and during the course of the investigation, one officer's assessment of her age was 15 to 16. (*Tasmania v Martin*, CoPS, Porter J, 29 November 2011)

In terms of law reform, the Government positioned the legal profession as the responsible agents when it called on the Tasmanian Law Reform Institute to review the *Criminal Code*. Its remit was specific in scope and this was its strength, however, the review did not address the complex and amorphous problem of child sexual exploitation. Amending sub-sections of the *Criminal Code* did not divide community opinion. Despite political and public pressure for reform, the review process itself was undertaken by lawyers and other professionals with expert knowledge. In this sense, public opinion may have demanded a review, but the public was largely absent in the process itself. This occurrence supports Dewey's (1927) observation that while the public demand an institutional response to a perceived problem, the actual process should be left to experts who are 'the best judge of how the trouble is to be remedied' (1927:207). Rather than this reform process being a 'quick fix' for a politicised problem, the changes to the *Criminal Code* made in response the crimes in question can be seen as occurring after public and expert deliberation, based on what Killias would describe as a desire to 'close the breach' (2006: 27).

Is there some difference between the legal age for sex work, and an acceptable age for someone to be in sex work, which appears, from these comments to be in the vicinity of a few years short of 17? This is a controversial question because it is linked to the blind eye that is sometimes turned to adolescents who become sexually involved with people older than them, sometimes in exchange for money and other favours. The treatment of child sexual exploitation by authorities is being re-examined in terms of how social and institutional attitudes, policy and practices regard sexually active children. It was allegations made by police officer Peter Fox

that triggered the Australian Royal Commission to investigate Institutional Responses to Child Sexual Abuse in 2012 and it took the Rochdale and Rotherham grooming cases to reveal how British police, social workers and child protection workers dismissed teenagers involved in sexual exploitation. The investigative, accountability and sense-making work of journalists began the public conversations, often reported in terms of outrage, which initiated these inquiries. Despite the sustained news coverage of the case of the 12-year-old girl, Tasmania appears to not yet have had this important conversation. There were internal and independent inquiries into the circumstances that contributed to these crimes, but not the sense of transparency and accountability necessary for the requisite catharsis that can restore faith in public institutions.

8.5 Discussion: Making news from social problems

Journalists were frequently criticised for treating crime as singular events and for failing to contextualise crime in a way that enables society to make sense of violence and suffering. As discussed in Chapter Three, journalism can play a role in providing better public understanding and policy responses to the social and economic conditions that contribute to crimes against children and this coverage needs to avoid tipping into moral panic. This case presented an opportunity for the former, but was also criticised for doing the latter. The frame analysis in the previous chapter indicated that the 'government problem' frame was dominant in the *Mercury's* coverage and, by locating the responsibility for both cause and corrective action with the Government, the analysis showed the process of politicisation. This chapter sought to investigate this process further by considering the influences that determined the journalistic choices that informed news content. The literature review identified the role of mediatised contest in public debate as part of democratic deliberation, but it also re-imagined such debates as being as much about legitimacy and power of those involved as they are about the issues

being discussed. The Lippmann-Dewey debate was revisited to highlight how the ongoing tension between claims of expertise and lived experience continues to be relevant to media research. In the case in question, there seemed a disjuncture between some in the legal and news professions that tipped towards the Lippmann perspective that were at odds with those who, following Dewey, did not claim to be experts on the law, but legitimately positioned to comment on and criticise the law and its application. The Lippmann-Dewey debate exists as a spectrum on which debates about power and the legitimacy to govern are framed. This chapter highlights the risk of claiming expertise and legitimacy in the news when there is a critical mass denouncing a decision. At times, perhaps, it is better to appear to listen to the 'meddlesome outsiders' than to denounce them as ill-informed. This kind of logic also connects to Bourdieu's (1986) idea of how individuals and organisations in the judiciary promote their professional legitimacy. In this instance, the field of the judiciary strongly defended its boundaries of expertise from the incursion of journalists and other implicit or perceived critics of judicial process. This resistance to public debate can, and needs to be, separated from the more obvious tension between public curiosity and the rights of the accused to a fair trial. Instead, this tension can be found in claims by some in the media that some people do not understand the law.

A complex set of influences contributed to coverage. While some reporters and sources saw these crimes as an opportunity to discuss a social problem, others did not regard the crimes as having much news value. For those who challenged the assumed newsworthiness of the story, it appeared that the likelihood of doing further harm was a major reason for arguing against coverage, as was the difficulty of covering legally complex and ethically sensitive events. The ethical sensitivities were enough for some journalists and actors to not pursue further coverage of this case. As such, perceptions of news value, including assumptions about journalistic interest and the effect of news coverage, also informed news access. In the process of

journalistic sense-making, perceptions of news values inform not only who journalists seek for comment, but also who uses comment in their communications strategy. This process of selection, of identifying the opportunities for news and finding voices to support the stories, was also influenced by how journalists and sources understood the legal context in which it occurred: that is, its socio-legal context, the relevant legal and ethical restraints on publication and the culture of mutual disdain shared by many news and justice professionals.

The interaction between these forces ensured that some sources did not want to talk to journalists and in this vacuum other sources found the news access they sought, such as those who used their interest in these crimes to put pressure on the Government. While it should not be surprising that those in the political sphere find opportunity in the vulnerabilities of their opponents, it would be overly cynical to assume that it is the sole reason for parties in opposition to question Government. Further out from the political realm, it is even more difficult to determine what motivates people to act. Assumptions about people's reasons need to include actions aimed to meet altruistic, personal and professional ends, and these are not always in accord. While it is difficult to assess motivation, this is also a requirement of journalists when they are selecting sources and assessing their credibility. Such a process of selection is standard journalistic practice and can lead to journalists preferring some sources over others and, in some cases, such an emphasis on individuals contributes to them becoming symbolically associated with certain causes or perspectives. This practice contributes to the 'personalisation of politics' that Tumber (1993; 2011) regards as a particularly contemporary feature of news discourse. This process, Tumber argues, stems from an increasing use of the media by politicians to promote themselves in order to maintain public approval for their policies, which also makes them vulnerable to having their legitimacy and personal authority also deconstructed by the media. In this case, the visibility of certain actors, such as the Minister for Children, the Children's Commissioner and the DPP

enabled each of these individuals to be clearly identified with the case and, in turn, to become symbolic of perceived problems. This personalization resulted in the ascendancy of Mason's legitimacy as an actor even after losing his position as Children's Commissioner and the lack of authority in Minister Thorp who lost her seat. Even before the case in question, Ellis was a public prosecutor with a high public profile, but his profile became attached to this case.⁶⁹

The appointment of a Minister for Children by the Bartlett Government in early 2010 also created a lightning rod for criticisms about the Government and the institutional handling of the case. Positioning a single minister to bear the brunt of criticisms leveled at the Government can be seen as contributing towards the personalisation of politics. The *Mercury* depicted the Minister as 'besieged' and 'embattled' and the Liberals targeted her in an unsuccessful 'no confidence motion' over her handling of the case (*ABC News* 13.10.2010). One key feature in this unusual case was that one primary definer in this matter, Paul Mason, shifted his position from children's advocate to political candidate. Mason was a very public critic of the Government throughout the period and thus already a political actor before he ran for a seat in parliament. However, his role as a primary definer who consistently located his comments within the 'government problem' frame was cemented when his criticisms became a political contest. The election for the seat of Rumney was a political contest, but it could also be understood as a moment when the altruistic, personal and professional agendas of two people crystallised. Three journalists described the political feud between the former Children's Commissioner and Thorp as being a distraction that provided journalists with stories that did little to serve public deliberation. One journalist reflected on how Mason's willingness to speak to

⁶⁹ For instance, when Ellis was removed from office following his conviction for negligent driving causing death, the *Mercury* (Killick 24.1.2015) listed the case of the 12-year-old girl when noting the controversies associated with Ellis's tenure.

reporters and to be an outspoken critic of government may have contributed to his 'dream run' with journalists (Journalist, Interview, 2012). Another considered this approach made an ideal 'stalking horse' for those wanting to attack government (Journalist, Interview, 2012). A third observed:

I automatically discounted what [Mason] was saying a notch or two because he was running for parliament and I think it is a mistake, or a danger, for people with a genuine issue to try and pursue it politically by standing for office. It is very hard to untangle in the public mind and in the mind of journalists what the genuine issue is and what is someone just trying to get themselves elected. Obviously, there are valid claims about child protection in Tasmania, and that is a bigger issue, but I guess in my mind, it was such a serious issue that it is probably better not to do it through the prism of two politicians having a go at each other. (Journalist, Interview, 2012)

Framing the crimes and the response to them as a 'government problem' presented journalists with the opportunities for newsmaking that were not only well sponsored by sources willing to speak, but also steered clear of the treacheries of being in contempt of court, or having to find a source willing to speak and sponsor the frame. The 'government problem' frame also appeared to benefit from being consistent and only debated within the terms expected of political contest. The Liberal's communication strategy and the *Mercury* appeared parallel: the newspaper uncritically reported the Opposition's criticisms of the Government, and the Opposition maintained a strategy that did not blur its attack by criticising other 'problems', such as child protection workers or the police. The Liberals also used to their advantage the *Mercury's* labelling of their coverage being in the public interest. Although the Bartlett and Giddings Governments attempted to portray itself as acting rationally and in accordance with due process, the Liberals and the *Mercury* branded the Government's actions as out of step with community expectation.

Journalistic dependence on individuals outside of the newsroom cannot be overstated. Without the verification of sources, reporting can only be opinion: a named source is preferable; an anonymous source brings the promise of scandalous material, but also tests the legitimacy and verifiability of the story. The willingness of actors to engage with journalists in this case was paramount in determining which stories, in the newsroom parlance, either 'got up' or 'went nowhere'. A complex matrix of journalistic logics and practice and legal frameworks, combined with the communication strategies of actors, led to Tasmanian news organisations favouring the 'government problem', which, while not always dominant, succeeded in terms of continued emphasis. The political field is fertile ground for journalists to find stories and sponsors willing to support them, compared with the legal field, which has less interest in publicity, even showing hostility towards having to deal with journalists. The criminal nature of this case meant news coverage was always going to link to the legal frame, but the interviews with journalists, lawyers and other actors in this case revealed that this frame was fraught for journalists. However, the nature of the social elements of the case – child sexual exploitation and social disadvantage – required journalists to find and use sources who could discuss complex and sensitive issues. Efforts to make sense of this criminal matter using 'social problem' frames appeared to flounder in part because it appears that journalists and their likely sources were unable to come together to construct stories using this frame.

Questions of social responsibility could have been addressed by welfare and religious organisations or academics, who have traditionally spoken on these matters, but these perspectives were conspicuously silent. An absence of reporting on the social conditions that contribute to a young person entering commercial child exploitation cannot simply be dismissed as poor journalism. The interviews show that the continuing media interest in the case meant that there was probably some willingness among some journalists to pursue other angles. Is it their fault that they did not make the requisite connections? In an era of time and resource-stretched

newsrooms, it is more incumbent than ever that social welfare groups undertake 'a greater proactive use of the media around child abuse policies and debates' (Mendes 2001:33). Some did try. For instance, the Tasmanian Sexual Support Service's Liz Little flagged this crime as potentially a bellwether for Tasmania:

There is more to come...there are children, young people all over this state that exchange sexual favours for shelter, that exchange sexual favours for money. These are the realities and at some stage we need to grapple with the issues of the exploitation of children, particularly the sexual exploitation of children. (*ABC News* 8.10.2010)

Such a bellwether was not heard by Tasmanian journalists:

It was such a shocking case that most people were consumed with the sheer scale of it, and the sensational nature of the charge, and then the rumours about who wasn't charged and why, so maybe that bigger picture got overlooked. I think that it's hard to believe it was an isolated case, and child protection seems to be so under-resourced and with such big problems and so many social problems in the state, so it's hard to believe it was isolated, so maybe it is worth looking at. (Journalist, Interview, 2012)

If this case was an opportunity to examine social attitudes towards adults who pay young people for sex, or the attitudes of police and other professionals who encounter those engaged in transactional sex, that moment was missed. The question is whether it is entirely the fault of journalists. This chapter has argued that the complex network of communication between journalists and their sources demands that journalistic practice *and* the communications strategies of those with knowledge must both be taken into account when assessing the efficacy of news coverage about crime and other social problems. While moral panic concepts have clearly traversed into popular usage, it is unfortunate that the limits to journalistic practice are not so readily understood. If they were, then assumptions about 'the media' might include some appreciation of the extent to which journalists and news

organizations are subject to litigation and political interference, and bound by the limitations of technology and budgets. However, a greater appreciation of the complexity of news flows does not determine the tipping point between coverage of a controversial legal matter that included claims of corruption and other conspiracies. The following chapter seeks to determine how coverage shifted from debates about a crime and the need for law reform to one marked by public outrage about political integrity.

9. LOSING CONTROL:,CONTROVERSY,, OUTRAGE,AND PANIC

9.1 Introduction

The decision by the DPP to not prosecute the so-called clients marked a turning point. Calls for clarification, explanation and transparency intensified and official responses were increasingly reported as unsatisfactory. News coverage provided opportunities for some to use the controversy to pursue their own agendas and, the resulting criticisms of Government and personal attacks on actors was, at times, framed as a test on the integrity of the Government and Tasmania's social welfare and justice systems. Claiming to represent the community concern enhanced the legitimacy of the Opposition's attacks and the news organisations that covered the story. While the previous chapters have considered framing and the practices that informed coverage, this chapter seeks to define the point at which news coverage of public concern tipped towards outrage and panic.

9.2 Controlling controversy

The DPP's decision broke as a story based on rumour over the weekend (Neales 25.9.2010a). The following day, the *Sunday Tasmanian* and *ABC News* reported Mason and others discussing the ramifications of this decision and, importantly, defining the rumored decision as controversial. On Monday *ABC News* reported that at least one police officer had called Devine's phone (Bester 27.9.2010). It was not until Tuesday, four days after the leaks surfaced, that Tasmania Police confirmed there would be no further arrests in a media statement:

While investigating phone records, Tasmania Police found three phone numbers linked to police officers. In respect to one of those numbers, the investigation found that the phone was being used at the time by another person who is not a police officer. With regards to the other two phone numbers, the investigation revealed that neither of the officers concerned were clients of the girl. (Tasmania Police 2010)

The use of leaked information in this case appeared to be part of the 'explicit strategy of individuals who know very well that mediatised visibility can be a weapon in the struggles they wage in their day-to-day lives' (Thompson 2005:31). These leaks and how authorities responded to the increasing loss of control over information appears to determine the tipping point towards panic. The DPP did not publically respond to these reports until the following Friday, when he appeared on ABC's Friday night current affairs program *Stateline* (Ward 1.10.2010) to explain his decision. The following day, the Memorandum was published in the state's three Saturday papers (*Mercury*, 2.10.2010).

Ellis described his media strategy as 'a pretty simple one':

I did agree to do an interview on *Stateline* because it's a longer form, and I trust Airlie Ward because she actually gets what we do. Also, if I wanted to do it at all I wanted to do it in a longer form and I did not have to do it in a sound bite or get it edited down to a sound bite. (Tim Ellis, Interview 23.10.2012)

As a statutory officer without a fixed term, the Tasmanian Director of Public Prosecutions is immune from political interference.⁷⁰ The Office did not have a media officer during the study period, which appeared to be a matter of both budget and priority for the Director. The homepage of the Director of Public Prosecutions'

⁷⁰ Tasmania is the only Australian jurisdiction where the statutory office of Director of Public Prosecutions is not a fixed term and therefore, the Director can only be removed from office through incapacitation or being found guilty of misbehavior (Director of Public Prosecutions Act 1973).

website (DPP 2012) had a link to 'media queries', which went to a page that singularly stated:

As a matter of policy all media inquiries are forwarded to the Director. It is helpful to note that the DPP does not provide a checking service for the media. For example, the DPP does not provide media with details of cases coming up in Court or more information about cases that have just been heard in Court. Also, it is not the Director's policy to comment on what decisions he will be making with regard to any upcoming charges, discharges or whether or not he will be appealing a particular decision. However, if comments have been made regarding some matter that concerns the DPP, the Director is interested to hear what has been said in order to consider a reply. (DPP 2012)

Ellis outlined his reasoning for this as based on budget:

I tell the local media that I am not their press officer and 'I am not telling you what's coming up in court, you need to be in court to report it and I am not telling you what happened in court afterwards, because it's your job to send reporters there if you want to report on what's in court'. Bigger jurisdictions with bigger budgets can afford something more ornate, but I don't think I can afford it. There is no place in my budget to do the press's job for it. (Tim Ellis, interview, 23 October 2012)

Without a media officer to field queries, Ellis dealt directly with journalists. He said his relationship with journalists was 'not something I lose a great deal of sleep over':

I'm the Director of Public Prosecutions, which does not mean I am a public director of prosecutions. I am not a public figure, nor am I aiming to be one. So I do not make commentary on each and every case and that is the idea of the limitation there. And there should only be one voice speaking about it and that is a relief for my staff who are not obliged to make any comment because they know it's the policy to refer all media to me and they prefer it that way, unless there are a few would-be stars... It seems to me that if you get a press

officer, the press officer runs you, rather than you run them. (Tim Ellis, interview, 23 October 2012).

Ellis said he only occasionally sent out media releases, and appeared reluctant to write what he described as ‘that queer, third party, disembodied form about what the DPP said’ (Tim Ellis, interview, 23 October 2012). Ellis may not have liked the dis-embodied, third person tone of press releases, but his approach to speak directly to journalists, or to write his own comment for *Tasmanian Times*⁷¹, can also be seen as contributing to raising and personalising the profile of his statutory position. Such actions are indicative of how the communication practices of individuals can influence the type of personalisation of politics that contemporary journalism is blamed for stirring.

Ellis’s preference for personally writing to media rather than relying on journalists seems in part due to his frustration with the inaccuracy and sensationalism described by other lawyers. For instance, Ellis disagreed that his office could do more to ensure journalists correctly reported matters related to his office:

Why isn’t it their editor’s job to get their reporters talking thoroughly to their lawyers on their payroll to sell their papers? Same with the ABC... That big organisation is always trying to get free legal advice off me and they are always told to get their own legal advice. (Tim Ellis, interview, 23 October 2012)

Eventually, Ellis’s strategy did include using television and newspapers in an strategy aimed at controlling the controversy. He said he spoke to Airlie Ward and had the Memorandum published because:

This office was somehow involved in cover-ups or was incompetent or that the work we do is protecting paedophiles, when it was not

⁷¹ As well as writing on this matter, Ellis also posted a number of articles on the *Tasmanian Times* during a public row with then Tasmanian Senator Duncan Kerr (Ellis 2010a, 2010b).

our work at all. So that direction of the debate was personally stressful because I place a lot of pride in the work we do and the work of this office is done with a lot of integrity and courage. I take a lot of pride in my own integrity, so I think that is why it was stressful because I knew that everywhere, buzzing around in conversations and in the media, that people were ill-informed and were having a media blitz that was based on misinformation and that by publishing what I did that it would bring the debate back to reality. I did not expect it to be perfect and that I would bring everyone around to my side, and I did not expect everyone to say 'now we've seen it, we agree with him'; I just wanted it better understood. (Tim Ellis, interview, 23 October 2012)

Ellis said he did not expect everyone to agree with him but also expressed frustration with those who confused the figures of those the number of men suspected of having sex with the girl, variously described as being at least 100 or as many as 205, with the number of men interviewed by police:

People who kept coming back to the same myths and the '200 men have been let off'. I never heard the case against 200 men or that there were 200 men there or 100 men. They were the ones that obviously did not read that and that sorts out the nongs from the people whose opinion you might be more worried about. Nongs who can't be bothered reading what has been put there for them to understand really don't cause me any stress at all because they are just nongs. (Tim Ellis, interview, 23 October 2012)

Central to the confusion was the question of how many men were suspected of having paid to have sex with the girl. The number reported in news coverage varied from more than 100 to as many as 205. The number also indicated that police had a list of alleged suspects from which to produce a number. However, Ellis did not clarify how many men were allegedly involved with the abuse of the child in his interview with Airlie Ward (Ward 1.10.2010) and instead corrected Ward for

introducing the interview by suggesting that the girl was sold 'for sex to more than 100 men':

ELLIS: ...Not 100 but I think about 12 men who were identified as having had sex with the young girl. (Ward 1.10.2010)

The court heard in the sentencing of Devine to 10 years jail that it was estimated that 100 men had paid for sex with the girl (*Tasmania v Devine*, CoPS, Evans J, 25 March 2010) and this figure was noted in news reporting (Glaetzer 26.3.2010). Ward tried again to clarify the number and Ellis continued to obfuscate:

TIM ELLIS: Not sure where the 200 figure came from. The 100 was somewhat of an estimate; the figure might be somewhere between those two. In terms of contact, really all there was, was an estimate and some telephone numbers on mainly Devine's telephone, which were traced back.

AIRLIE WARD: So can we clarify there then as well, was there a list of clients?

TIM ELLIS: No. There was no list at all. There was no diary of any forensic use. There were some scribbles and some times and so but absolutely no list of clients with names or anything like that. (Ward 1.10.2010)

Instead of dwelling on how many men were involved, Ellis emphasised that the lack of the prospect of a conviction had led the decision to not pursue more prosecutions:

It was the lack of the prospect of conviction. The way we went about it was to look first at the admissibility of the evidence and the viability of the case as one that would bring conviction and then to look at the alternative that even if it might be established; is it in the public interest to bring these prosecutions, given that this was an innocent child, basically, manipulated by two quite evil people, who are each serving 10 years imprisonment. To keep her going just to satisfy a blood lust lynch mob mentality that's being stirred up by people with certain agendas, I don't think is in the public interest. (Ward 1.10.2010)

The following day, the Memorandum clarified the distinction between the numbers:

In early October 2009, a police investigation was launched as a result of police being notified by the Child Protection Authority. Statements were obtained from the complainant and her sister. A number of 'clients' were found from telephone records and statutory declarations were obtained from them. This decision was made by police in an effort to obtain evidence against Devine and (M). At that stage...these people had not been interviewed on video and therefore any statements they made to police were inadmissible and no identification evidence had been obtained from the complainant. Since then police have identified through telephone records 205 people who may have had contact with the complainant. Many people have either denied calling and state somebody else had access to their telephones, or stated they telephoned the number but never went to (Z) Street. Nineteen people have admitted to police to some form of sexual activity with the complainant. However, of those 19 people only seven people would agree to be interviewed on video. In total, 12 people were interviewed on video with five denying any sexual activity. (*Mercury*, 2.10.2010)

In his television interview (Ward 1.10.2010), writing in the *Tasmanian Times* (Ellis 2011) and in his interview for this study (Tim Ellis, interview, 23 October 2012), the DPP continued to specify that his decision was not based on a list of alleged offenders, but only the details of the seven men who agreed to video interviews with the police that were recorded in the Memorandum (*Mercury*, 2.10.2010). Ellis later clarified what he meant:

The number who had made admissible confessions was very small and inadmissible confessions are just that, they don't advance the case against them at all. They are in the category of names really and that only proves that you own the phone that contacted this number. (Tim Ellis, interview, 23 October 2012)

While explaining the reasons for his decision were important, the confusion and frustration about this case was not only about the DPP's decision. Many people were dismayed by the small number of prosecutions, which involved Tasmania Police, not just the DPP. News coverage and commentary focused on Ellis's decision not to prosecute the men named in the Memorandum, which was not the same as asking what laws and professional and personal decisions influenced police to not charge any of the estimated 100-205 men who paid for sex other than Martin. There was very little coverage explaining why police can have information that is not admissible in court as evidence, with one exception: the comment piece in the *Mercury*, by then Tasmania Police Association president Randolph Wierenga (19.10.2010), that was discussed earlier. The confusion about how many men may have been involved and the rules of evidence provided an opportunity for journalists and their sources to not only speculate on the numbers, but also float rumours that challenged official claims. Such commentary attracted national attention and comment. Sexual Assault Support Service chief executive Liz Little was reported as saying that she was told that 'another two clients told police they walked away from the child prostitute after realising how young she was' (Neales 1.10.2010). The commentary continued in the letters-to-the-editor pages, which juxtaposed the legitimacy of public interest over the legitimacy of the DPP to be the final arbiter of a controversial decision:

I suggest that the prosecutions should go ahead so there is some transparency for the public over this issue. Let the court decide where the law is deficient so that those laws can be amended so we don't run the risk of becoming a tourist attraction for child sex predators who can escape prosecution based on a 'reasonable belief' on the back of a false ID. (Dyson, 29.9.2010)

And:

OH come on. How could a grown man spend half an hour with a 12-year-old girl, even in a darkened room and not know that she was under aged ... I would expect the Director of Public Prosecutions to move heaven and earth to prosecute these men. Let the judiciary work out if their excuses stack up. (Di Falco, 29.9.2010)

This perspective, of a community unable to reconcile an official decision, was challenged. *Mercury* columnist and barrister Greg Barns described Premier Gidding's refusal to challenge the DPP's decision as proof that she understood 'the nature of the law and our legal system' (Barns, 4.10.2010). However, it would be false to draw the line between those who contested Ellis's argument and those who accepted it as the difference of those who understand the law and those who did not. Of note were comments by former Tasmanian Liberal Attorney General, Sir Max Bingham⁷²:

Sir Max said he doubted there was not enough evidence to charge at least some of the men and he queried why the DPP had taken the approach that either all of the men must be charged, or none of them. 'An independent review is the answer because, as an old friend once said, for evil to prevail it is necessary only for good men to do nothing,' Sir Max said last night. 'I'd be surprised if out of the 100 cases there weren't at last half-a-dozen that could be made to hang together, at least to prove society's morality on this issue still prevails'. (Neales 1.10.2010)

⁷² Sir Max represented the Liberals in the electorate of Denison from 1969–1984 where he served as Attorney General, Deputy Premier and Opposition Leader. As well as having a distinguished parliamentary career, Sir Max went on to join the National Crime Authority which focused on organised crime in Australia. He was the founding commissioner of the Criminal Justice Commission which reviewed the powers of Queensland Police which was recommended by the Fitzgerald Report.

As one lawyer said:

I was a bit surprised that a little bit more effort was not put into talking to a few more people, so I guess I share that to a certain extent and I did have a funny feeling that there was a lot of activity going on and then suddenly it was only Terry Martin who emerged and I wondered why that was so, just as an ordinary citizen, and I thought obviously the police have dedicated a lot of resources to this and I know they have spoken to however many and had narrowed it down to the few who were prepared to sign the statement ... I was a little surprised that the investigation did not seem more comprehensive and come up with a few more people given the number that seem to have been involved. (Lawyer, Interview, 2012)

This questioning continued right up until Martin's trial in late 2011. For instance, lawyer Bronwyn Williams wrote:

So, the light in the 'dark and dingy' flat was adequate for a detailed description of Devine, across a room, but inadequate to assess the age of a girl he was having sex with? I don't think so... Some have expressed an opinion that Terry Martin was prosecuted for 'political' reasons, but the suggested victimisation of Mr Martin pales into insignificance next to the much larger conspiracy – the conspiracy to dispatch these despicable crimes as expeditiously as possible from the public arena. Protection is being offered, but I'm not sure it's being offered to children. (Williams, 7.12.2011)

Ellis responded to Williams on *Tasmania Times* the following day, in which he began:

I am truly tired of every self-styled expert on law having their views published and concluding in a personal attack on me. If I'm not accused of picking on one person because he was prominent or for some other spurious reason, I am accused of covering up some Very Important People who are on a 'list' (which doesn't, and never has, existed. I don't know how many times I have to say this). (Ellis, , 8.12.2011)

Ellis said he replied to Williams because he was ‘ticked off that it was the same ridiculous conspiracy stuff being churned over by someone pretending to know better’:

I could have ignored it, but I think I pretty well had enough and I was pretty stressed out about the whole thing and I when I saw the spot-fire break out, I thought I would put it out rather than grind my teeth about it.... I call it the conspirator’s website. They are a small bunch who talk to each other so it was unusual that, but I was just fed up... So I did it mainly to get it off my chest. (Tim Ellis, interview, 23 October 2012)

The communications strategy of the DPP’s office has been described here as contributing to the confusion and controversy because the DPP did not appear to have had a pre-emptive communications strategy for what was likely to be a controversial announcement. Journalistic sense-making and accountability work meeting official silence created a vacuum that provided the opportunity for critics of the Government and the DPP to define the debate as controversial and potentially scandalous. The decision not to press further charges became a symbol of anxieties about the institutional responsiveness to child sexual abuse, and more broadly, anxieties about political probity.

9.3 Reporting outrage

Despite attempts to get the story off the front page, news coverage in the fortnight following the announcement was the most intense in the study. As previously discussed, some reporting was the result of political interests finding an opportunity to criticise the Government, but would it be correct to assume that politicisation was the core reason for the outrage in coverage? There are many questions to be asked if we do not simply label the controversy a moral panic. Were there reasonable questions for journalists to ask about this decision? If so, who was asking these

questions and what were the factors that stopped these queries being satisfactorily answered in the news?

9.3.1 Responding to sexual assault

Criticisms of the justice system can simplify the factors that make policing and prosecuting crimes often difficult. Stepping back from journalistic practice to consider the challenges presented to police, court administration and others who were responding to the crimes helps explain why communication between these professionals and journalists was not always clear. It also illustrates some of the features of this case that made it an ideal site on which to examine and deliberate on how society, including its institutions, address the problem of crimes against children.

Sexual crimes, and child sexual crimes in particular, present a range of issues that need to be understood in order to appreciate the reasoning behind the DPP's decision. This case highlighted a need for deliberation about the capacity of Tasmania's justice system to prosecute child sex offences and these deliberations were included in the news coverage that contributed to the confusion and scandal associated with the case. These factors included the problem of an adversarial court system further traumatising victims and the difficulty of getting enough evidence to make a successful prosecution. These matters demand more than law reform; they also require some reappraisal of the attitudes and assumptions about sexual assault held by those who investigate and prosecute these crimes.

A problem in many sexual assaults and epitomised in this case, is the cost to victims of pursuing justice through an adversarial court system. Among the reasons for not pursuing further prosecutions, the DPP included the likely impact of the court process on the already traumatised child, both in terms of having to continually return to court and relive her trauma and also the publicity around these trials. The question of how justice could be served in a way that did not re-

traumatise the child is an important feature of this study. The trauma associated with appearing in court as a witness to sexual assault was cited as one reason that the girl in question did not wish to identify or testify against any of the men who paid to have sex with her.⁷³ In the sustained news coverage, the wishes of the child to stay out of the courts and the distress that this coverage caused her appeared mostly ignored by advocates demanding that the men be brought to justice. This is despite the victim impact statement, tendered by her father, 'detailing severe trauma, ostracism, alienation, stigmatisation, difficulties in peer socialisation and misplaced guilt' (*Mercury*, 2.10.2010). Why did some individuals, such as Paul Mason and Liz Little, who were ostensibly speaking out in defence of children, perpetuate media attention about a crime when the victim and her extended family did want further media attention?⁷⁴ Journalists did not appear to challenge the Children's Commissioner who was very vocal in his calls for the men to face court. In his report, Mason (2010:5) rationalised his paradoxical decision by referring to the United Nations Convention on the Rights of the Child and said that he asked to speak with the child, but she declined to speak with him. Mason acknowledges that he had been advised 'the Subject Child and her older sibling were suffering emotionally each time this story was raised in the papers' and concluded:

In particular she needs to know that my concern has been not only with her but with all children who might now or in the future find themselves in similar situations, and to know that her story is not entirely unique. (Mason 2010:5)

⁷³ It was also noted in news that the girl had told police she was unable to identify any of the men and would not participate in any identification procedure (Neales 2.10.2010) and that Devine had threatened the girl with violence in phone calls he had made after his arrest (Glaetzer 23.3.2010).

⁷⁴ After Martin was found guilty in December 2011 that the *Mercury* reported that the 'devastated family members' had 'broken their silence' and hoped that Martin's trial would end the media attention on the girl (Dawtre, 30.11.2012).

The problem in this case was the question of the injustice of a victim of a sex crime seeking invisibility rather than justice through the courts. In particular, this case highlighted the ongoing problem for victims of rape and sexual assault seeking justice. Despite decades of rape law reform, Australian legal culture continues to 'discredit and disbelieve women and children who allege sexual abuse' (Kift 2003: 293). One of the concerns about attitudes to rape is that it perpetuates the decisions made by police and prosecutors that some victims lack the credibility to ensure a reasonable likelihood of a conviction if a case makes it to court (Cockburn 2012; Heath 2005). Some of the problems of the law's treatment of victims of sexual crimes was being deliberated at the time of the crimes and in October 2013, the Tasmanian Parliament passed amendments to enhance the protections available to children and other vulnerable people when giving evidence in a criminal trial.⁷⁵

Despite the centrality of the likely trauma to the girl in the DPP's reasoning, news coverage barely challenged this feature. For audiences that were confused, disbelieving and even suspicious of this decision, there was little describing the ongoing efforts to improve the situation. What might be inferred from this absence in reporting is that no one took the opportunity to provide any nuance to what was being framed as a 'legal problem'. One actor, who was professionally placed to comment on these reforms, reflected on the decision not to talk about them publicly in terms of a number of filters in decision making:

What can I say in a public environment that would do no harm to the child involved?... The second filter ... was to ask what do I talk about and what systems need to be improved so that this doesn't happen again, or if it happens again, it'll happen in a less harmful way – because it will happen again and there will still be harms in

⁷⁵ The Evidence (Children and Special Witnesses) Amendment Act 2013 amended the Evidence (Children and Special Witnesses) Act 2001, the Criminal Code Act 1924 and the Legal Aid Commission Act 1990.

there but hopefully it will be less harmful...So what are you doing about helping to change the court process? (Interview, Actor 2012)

Some might suggest that there is little news value in the dull process of legal reform or that the public is content to leave the finer points of legal deliberation to the experts. However, the silence in news about this aspect of the case contributed to coverage that included damning criticism of the justice system, with no reassurance that this shortcoming was being addressed.

The problem for victims begins before a matter reaches court. Investigations into child sexual assault consistently find small rates of successful prosecutions for a number of reasons that include: a lack of sufficient evidence, concern to protect children from distress and, in cases where parents are unwilling to cooperate with police or if a child is not willing to make a statement, 'police have limited options' in how they can proceed towards prosecution (Hood and Boltje 1998; Humphreys 1993; Parkinson et al. 2002). Police play a 'significant filtering role' in determining which allegations are investigated or proceed to trial and police attitudes and assumptions about rape victims also informs the 'filter' that stops prosecutions going ahead (Parkinson et al. 2002:357).

Police attitudes to child sexual abuse can affect officers' perceptions of seriousness and the perceived impact on the child that can inform decisions about whether the case is worth investigating further (Kite and Tyson 2004). Police who accept rape myths are less likely to believe victims, especially those who do not conform to the stereotypes of rape mythology (Page 2008, 2010; Sleath and Bull 2012). Attitudes also inform judgments about whether a jury will be sympathetic to a child, especially a teenager, who appears sexually knowledgeable. The child as seducer is a familiar tropism and still has some salience in the courtroom. For instance, Martin's defence lawyer Peter Barker, in his summary, told the court:

'If you see a gaggle of school girls in uniform at a bus stop you could assume they were school-aged – and you could probably tell if they

were in primary or high school. If you saw those same girls dolled up for their school formal then you might struggle'. (Dawtre, 19.11.2011)

These perspectives can change. An Australian study (Darwinkel et al. 2013:904) found that police officers after specialised training in sexual assault investigation 'showed a greater consideration of the offending relationship and grooming processes, and they made fewer negative comments in relation to the victim's behaviour and the lack of corroborative evidence'. When these comments are taken into consideration, it makes sense that for some, the lack of further arrests in this case raised questions about what attitudes and professional practices informed how police, and others involved in child protection, may have regarded the victim which led them to not pursue more prosecutions. Mason alluded to these problems in his study when he noted that:

Police treatment of the absence/presence of consent in underage sex may have confused and distracted Child Protection Services from the risk. (2010:7)

Questions of accountability relating to the police investigation, particularly the allegations that police were on the 'list', did not go past the newly formed Integrity Commission and its incoming CEO Barbara Etter, a former police officer who had worked in corruption prevention. She initiated the organisation's first 'own motion' investigation, a month after the organisation commenced, which sought to audit the internal investigation of the police officers who were allegedly linked to the girl (Integrity Commission 2011). The investigation aimed to determine whether the Tasmania Police internal investigation there had been a 'willful cover-up or attempt to cover-up misconduct'; and if the internal investigation had been compromised by misconduct (Integrity Commission 2011:16). The investigation determined there was no cover-up, but it also revealed a number of deficiencies and systemic failings that had 'adversely affected the internal investigative process':

- critical decisions that drove the internal investigation were based on false assumptions or incomplete information;
- the subject officers had not been formally interviewed and instead were spoken to informally, and in circumstances in which no audio recording was made; and
- there was an absence of investigation and command-related reporting of the type that would routinely be prepared in investigations of this nature (ICT 2011:16).

Following the Integrity Commission investigation, the Commissioner of Police directed a fresh internal investigation by Tasmania Police into the internal handling of the allegations against the three officers and the findings of this investigation was delivered to the Integrity Commission in April 2011 (Integrity Commission 2011:16). Despite considerable public interest in the Commission and the case in question, these investigations were not reported in media. Instead, the *Mercury* reported the annual report when it was tabled in parliament, and focused on the Commission's calls for 'better legislation so it can do its job properly' (Killick 28.10.2011:18)⁷⁶.

Another factor in the decision not to prosecute the so-called clients was that there was not being enough admissible evidence to ensure likely convictions. The claim that it was too difficult to get enough evidence on some of the men was challenged in public statements by actors such as the Children's Commissioner and also correspondents to the editor's pages in the letters pages.

There are strict rules around the admissibility of evidence relating to police questioning of suspects. Video-recording evidence is regarded as a significant step to

⁷⁶ Despite promises to review legislation, the ICT was still in the media over lacking the necessary legislative powers to investigate allegations in 2012 (Killick 19.4.2012).

protecting suspect's rights as well as protecting police from false allegations of police wrong-doing (Dixon 2006). The principle of the right to silence is one of the fundamental principles of common law that sits, 'inter-locking and mutually reinforcing' with other principles, such as the right to a fair trial and the right to presumption of innocence (Dixon and Cowdery 2013:23). The right to remain silent was a factor in this case and was cited as a key reason that police were unable to get enough evidence from the men they contacted. This fact was detailed in the Memorandum:

Other suspected clients denied ever making the phone calls to the number advertised by the girl's pimp, or said someone else had been using their phones, or that they had never turned up for the appointments. And of the 19 clients who admitted to having sex with 'C', only seven later repeated the same admission on video tape for police, as required to constitute admissible evidence. (*Mercury*, 2.10.2010)

Investigating police had a difficult combination of a reluctant witness who said she would not and could not identify the men, and the problem of clients who were less than co-operative with police. The men that Tasmania Police linked to the crimes through their phone number appearing on Devine's telephone records were able to either deny ever making the call or admit that they phoned the number but then did not attend.

A key area in the evidence rules in this matter was how the right to silence was exercised and yet very little news coverage reported on this aspect of the case despite the right to silence being an issue in both Australia and the United Kingdom that 'has rumbled on for many years' as a 'symbolic issue providing territory on which conflicts over police powers, civil liberties, due process and crime control have been fought' (Dixon and Cowdery 2013: 23–24). The right to silence has also been blamed for undermining sexual assault prosecutions (Dixon and Cowdery 2013:35), as has the broader suite of rules around admissibility of evidence

(Parkinson et al. 2002). Similarly, despite the merits of reforms in the rules around admissibility, such as videotaping of confessions, police investigations remain affected by officers who are not clearly informed about what is legally permissible in suspect interviews (Kebbell et al. 2006). Poor evidential quality is also cited as a contributing factor to low prosecution rates of child sexual offences (Burrows and Powell 2014). Some of the difficulties caused by suspects exercising their right to silence can be addressed through changes in how police interview and collect information (Dixon and Cowdery 2013), however, it can also be argued that more needs to be done to ensure that police training equips police for the difficult task of identifying and acting on child sexual exploitation. As Dixon and Cowdery (2013: 32–33) note: there is very little empirical evidence in Australia on the impact of silent suspects on the criminal process, but it has become ‘a symbolic issues onto which anxieties and concerns about criminal justice have been loaded’.

Police frustration with evidence laws was succinctly, and solely, observed by the Tasmania Police Association president, Randolph Wierenga who wrote an op-ed in the *Mercury* connecting Ellis’s decision as to a broader concern about evidence laws:

The advice clearly reveals the extent to which police are hamstrung by the current arcane rules surrounding admissibility of evidence...When police commence a criminal investigation the dice are already loaded. If, in the course of an investigation, they believe the person they are speaking to is a suspect, the first thing they have to tell that person is ‘Don’t speak to me’. If they do speak to police and make admissions, whatever they say will quite likely be inadmissible if it isn’t recorded on video...The proliferation of standing commissions around the country is testament to the fact that the normal rules of evidence are failing us, because the judicial system can’t get to the truth of a matter unless there is sufficient public outcry. (Wierenga, 19.10.2010)

It is arguable whether the requirement to videotape interviews can be described as arcane; there is nothing secretive or mysterious behind a practice that ensures

transparency to the police interview process. However, Wierenga's comments alluded to the rules around police investigations that can make getting information from suspects difficult and he started the article by observing:

The recent outcry over the failure to protect a 12-year-old child, in the care of the state, requires some context, questions and criticism -- because failure to learn from experience will inevitably lead to the same mistakes being made again. (Wierenga, 19.10.2010)

And concluded with:

It is time to ask the questions. Do we have enough people on the front line? Is our justice system about justice? How do we, as a society, deal with prolific and persistent offenders? Or will events like these continue? (Wierenga, 19.10.2010)

Reflecting on why he wrote the article in an interview for this study, Wierenga said:

I think there was a fair degree of blame being apportioned to the police handling of the case and what this piece tried to explain, and I think Ellis did the same thing, was that police have to operate within the rules and the rules are such that they could not get the evidence necessary for a prosecution that would have appeased parts of the community. (Randolph Wierenga, Interview, 9.10.2012)

And:

Evidence is complex and lawyers have constructed their own language and become the gatekeepers to that language. The fundamental problem is that our so-called justice system is not a search for the truth, and in fact, it makes it difficult to find the truth because of the adversarial system and the rules of evidence. We chip away from time to time about the legal system particularly when there are cases such as this one. (Randolph Wierenga, Interview, 9.10.2012)

Wierenga's position in this article is not surprising: as a representative of Tasmania Police, his role is to defend police actions and to relocate blame to others. However,

he was a lone voice in both explaining to a confused public why police could not gather more evidence against the men and what he believed were issues raised by this crime that ought to be addressed. No one else appeared to join Wierenga's effort to 'chip away' at problems in the justice system or how police collect evidence.

Police work is notoriously difficult and, particularly in the case of child protection, traumatic (Wright et al. 2006). This study does not shift the blame from the DPP to the police investigation for not ensuring more prosecutions in this case. Instead, it observes that the case raised questions about police attitudes and processes in relation to young people who may be caught up in sexual exploitation. This question is important and it is under review in the UK, following the inquiries into the grooming scandals in Rotherham and Rochdale and the crimes investigated by Operation Yewtree (see Chapter Three). These findings revealed that attitudes to young people deemed sexually active, and therefore not victims, played a notable role in crimes being inadequately investigated by police and welfare professionals. The crimes against a 12-year-old girl committed by about 100 men over a four week period while she was a ward of the state presented a similar opportunity for scrutiny in Tasmania. Mason's final recommendation (2010:13) also signaled his concern with processes:

That after an appropriate period the Government advise the Governor to appoint a Commissioner of Inquiry under the Commissions of Inquiry Act 1995 to review the decisions of the Crown in relation to the prosecution or otherwise of persons suspected of having had intercourse or indecent dealings with the subject child in order to address any public concerns about the probity of such decisions. (2010:13)

Decades of rape and domestic violence reforms have made significant inroads into how media, police and the courts treat these crimes. The point is that attitudes, legislation and court processes are not fixed edifices. In this case, the mediated expressions of outrage were not just expressions of ignorance, misinformation and

anxiety, but also genuine confusion and concern that attitudes and legislation had prevented justice being served. This is not the forum to address what processes require review, but it is the place to observe that when statements are made in the news that can trigger public confusion or distrust, there is a place for news coverage to make sense of this uncertainty. In this case, news coverage noted that police were unable to get the admissible evidence required for prosecutions, and reported criticisms about the lack of evidence, but there was little in reporting to make sense, at a layperson's level, of what occurred during the police investigations and why more evidence was not collected. In this vacuum, the speculation, criticism and allusions to cover-up remained largely unchallenged. The question remains as to whether journalists tried to explain.

9.3.2 One hell of a story, but...

There were a number of difficulties for journalists trying to cover this case. These included: the professional challenge of covering complex legal proceedings in a way that was accurate, made sense to general audiences and were not in contempt of court. There was the dilemma of whether coverage served the interests of the victim and the difficulty of making sense of practices and processes, such as those of a police investigation, that were not on the public record. Compounding these difficulties were the usual limitations on journalists, such as deadlines and other pressures. The result was some episodes and issues being raised in coverage or otherwise on the public record, that did not get further coverage. A closer examination of this apparent 'incomplete' reporting serves two purposes. It explains the practices of journalists and sources that influenced the non-reporting of certain issues and identifies how news coverage may have been able to circumvent the confusion and panic that marks this case.

One of the difficulties with reporting this case was that it began in 2009 with an arrest, not a rumour. One journalist lamented how, once a person has been charged by police, in this case Martin, the opportunities for reporting 'kind of dries up':

This is not investigative journalism at this point, this is back off, the courts are taking over and as soon as you land there it does not matter ... It becomes a very real question of 'what are you saying about somebody?' and the question of where a legal case is at the time. That is to say, where do you sit in the legal framework? ... I don't want to be done for contempt of court and I don't want to shut us down. That is a bad outcome. But...I still want to report.
(Journalist, Interview, 2012)

Martin's arrest alone 'had all the hallmarks of Labor set up' (Lindsay Tuffin, Interview 1.10.2012). As one reporter reflected, some of the gossip between reporters, police and other contacts stirred up speculation that, if true and verifiable, was potentially scandalous (Journalist, Interview, 2012). However, journalists trying to build a story about the case in October 2010, when the story really began to attract national news organisations, were limited by what could be said about Martin in relation to this crime, such as the identity of Martin's high-profile former girlfriend and the role Martin's medication may have played in his crimes. One journalist described how a colleague described the unfolding details as both 'one hell of a story' but 'one hell of a legal minefield' (Journalist, Interview, 2012). This is not to criticise restrictions on news coverage of criminal proceedings; media laws around publication are in place to ensure common law principles, such as the right to a fair trial, are observed. However, the distance between what reporters and many in the community knew and what could be reported, provided a tension between those wanting to report, those who saw little news value in the story or saw those values over-ridden by the need to be cautious.

This tension was not limited to newsrooms. The Attorney General also told Parliament:

Let us not forget there are still live legal proceedings going on which are part of the broader cases we are discussing here. It is dangerous for us to go too close to any of that because we could jeopardise a case that is before the courts at this time (Parliament of Tasmania 2010b).

9.3.3 *Reporting on pedophiles and other folk devils*

It was two years between Martin's arrest in 2009 and his trial in 2011 and neither Martin nor anyone on his behalf were quoted as sources in coverage. Tasmanian news organisations, notably the *Mercury*, sent reporters to all of the pre-trial hearings but these could not be reported.⁷⁷ The *Mercury's* David Killick attended open court hearings on evidence in February, April and June 2011 when Justice David Porter considered whether the evidence from the men who had admitted to police they had paid the girl for sex, would be admissible in Martin's 2011 trial. Killick's attendance at these hearings is an example of how the accountability work of journalists can be time-consuming and costly with little return for their organisations.

All the journalists interviewed for this study noted that reporting on the factors of Martin's defence before his trial were likely to see them charged with contempt of court. However, the interviews revealed that the question of how to frame Martin was discussed in newsrooms. In the interviews for this study, journalists recalled debates about Martin in newsrooms being somewhat divided along the lines of those who either liked or disliked him as a politician, and between those with or without first-hand experience of the blurring of free will and choice caused by neurological illness. There is little doubt that Martin was on good terms with many Tasmanian journalists prior to his arrest, as this journalist describes:

⁷⁷ Pre-trial arguments in court are conducted without the jury present and are not allowed to be published before or during the trial of a person because of the risk that the publication of evidence that has been ruled inadmissible may prejudice a trial (Chesterman 1997).

I really liked Terry... I liked him as a human being, which is rare for politicians and me... I thought he was a genuinely good person – and a good gossip, which journalists love. And he was a good contact, a good source and I liked him as a person. (Journalist, Interview, 2012)

When the journalists interviewed for this study were asked about whether they spoke to Martin during this time, all appeared guarded in how they expressed their views: they either denied speaking with him, or said they only did so via email or text message. While this is not surprising, it does raise the question as to the newsroom and social pressure to appear not to support a person accused of crimes against children.

Journalists who were attracted to the question of whether the medication for Parkinson's disease could have affected Martin's judgment cited their personal experience with sufferers of neurological disorders as a reason for their curiosity. One journalist described those in the newsroom with experience in neurological illnesses as being able to 'see' more clearly Martin's defence in mitigation as reasonable (Journalist, Interview, 2012). News organisations had to contend with the value of introducing a difficult and contentious explanation about Martin's illness to a potentially disbelieving public. One reporter recalled pitching a story about Martin and being told by a number of senior editorial staff that they did not want to run a story like that because they did not want to be seen as 'apologists for stuff that had the community up in arms' (Journalist, Interview, 2012). One way the *Mercury* could address this dilemma was through the opinion pages, thus positioning the alternative opinion at arm's length from that of its editorial position. For instance, the *Mercury* published a long letter from Parkinson's Australia and Tasmanian specialist doctor Frank Nicklason who criticised Tasmanian journalists for 'headlining news' about Martin's trials but 'giving little detail relating to the relevant medical issues' (Connor-Kendray and Nicklason 23.11.2011).

Some journalists commented that Martin's crimes coincided with the unrelated matter of the arrest of Tasmanian *ABC* television personality Andy Muirhead on child pornography charges that made reporting child sexual crimes particularly sensitive for Tasmanian journalists. Alternatively, other journalists reflected on the difficulty of reporting on Martin when they felt sorry for him:

I just felt awful for him, it felt very archaic in that 100 men had committed these sins, but here is your scapegoat and let's throw rotten tomatoes at him. (Journalist, Interview, 2012)

Lindsay Tuffin, who had worked for the *Mercury* as a sub-editor for years before starting the *Tasmanian Times*, made similar observations:

I had my own views on it and I knew Terry to a degree and I had a degree of sympathy for him ... One of the things I hate about mainstream media is the 'putting people in the stocks' syndrome... The countless times I sat as a down-table sub and watched some poor bastard, front page photos of him, that is the equivalent of putting silly bastards who have failed into stocks and throwing tomatoes at them, that is a front page picture. (Lindsay Tuffin, Interview 1.10.2012)

Tuffin said that journalism should always resist the temptation to join 'the mob' that puts people in the modern equivalent to the stocks. In the case of Martin, Tuffin said he resisted running material on Martin until there was a groundswell of public commentary. He then ran several articles written by neurologist Frank Nicklason about the treatment of Martin as a critic of the government (Nicklason 2010), the involvement of medication in Martin's crimes (Nicklason 2011a, 2011b, 2012a, 2012b), and the lack of news content detailing the effect of medication on Martin's judgment (Nicklason 2011b). The extent of the media attention on Martin was noted by Justice David Porter in his comments on passing sentence, as was the impact of the coverage:

Mr Martin seems to have become something of a lightning rod for community outrage, channeled through the media, at the undoubtedly outrageous situation in which the complainant was put...I accept that Mr Martin's reputation has undoubtedly been irretrievably harmed, if not destroyed, irrespective of the revelation of the reasons underlying his use of sex workers, and his consequent engagement of the complainant's services. (*Tasmania v Martin*, CoPS, Porter J, 29 November 2011)

The impact on Martin of appearing named and pictured, but voiceless in the news for two years while awaiting trial, was described by one observer as being 'underneath the blow torch' (Actor, Interview, 2012).

To some, Martin became a symbol of a perceived injustice because journalists were not at liberty to explain why he was singled out from the other men for prosecution. The reasons were clear and uncontroversial at his trial: Martin was the only man to invite the child to his home where the crimes occurred over several hours in a well-lit house and he had testified to police on video about the crimes; but it would be two years before these reasons were made public. Until his trial, speculation about why Martin had been arrested, while others remained at large, contributed to the ambiguity and confusion associated with the processes of justice. This confusion informed the speculation about the reasons why Martin was the only one arrested. That speculation spiraled into conspiracy.

9.3.4 *Reporting on conspiracy*

Policing, by its very nature, demands a controlled communications environment. Like the courts, police work has to balance the demands of accountability and transparency with ensuring fairness and dignity to both victims and the accused. In this matter, police and the DPP had relatively closed communications strategies, with one important exception. The release of the Memorandum was an unprecedented act of transparency that showed something of the deliberations

between police and the office of the DPP. One of the riddles in this investigation is why such an apparent act of transparency and elucidation did not stop the controversy from escalating.

Leaked information that largely appeared to come from sources close to police played a notable role in the amplification of the controversy. Journalists in this case were talking to people who had information about inquiries and investigations that were not on the public record. These leaks triggered some news coverage, such as the rumour that there would be no further prosecutions. Other leaks, such as the information about the three police officers being on the 'list' and Mason's concerns that police had not acted when first told about the girl being sold, appeared to shine a light further into the corner of established news stories. However, it was not the leaks themselves that contributed to the shift from concern to conspiracy. Instead, it was the commentary around the leaks that appear to introduce the idea of a cover-up.

The *Mercury* used the letters-to-the-editor pages and online comments to add a sense of community response to coverage, and it is here that opinion and speculation also reflected conspiratorial thinking. Articles and online comments on *Tasmanian Times* were also notable for speculating on events. The *Mercury* also used readers' comments in the letters-to-the-editor page to represent public sentiment on Martin's conviction immediately after his trial:

One wonders what the odds are that once the new head of the Integrity Commission is appointed (Mercury, November 22) it will investigate the other men who had sex with the 12-year-old girl. If justice is to be seen to be done in Tasmania, one prays the odds are not 100 to 1. (Jeffery, 23.11.2011)

So Terry Martin is guilty. Now let's have a look at all the others. There are sure to be some people of public interest on the 'list'. (Charlton, 23.11.2011)

If nobody else is prosecuted, is it reasonable to suggest that Terry Martin was prosecuted not for what he did but for who he is? (Solomon, 23.11.2011)

The idea of the 'list' was a distraction for journalists and, more broadly, deliberation. While it symbolised the public and journalistic confusion and curiosity about the police investigation, the idea of the 'list' also led journalists away from looking at the controversy in terms of the need for clarification and embedded the idea of there being a conspiracy needing exposition. The emphasis on the 'list' stopped journalists doing the sense-making and explanatory work required of them to clarify the facts of the matter. This would not have necessarily ended conjecture because the questions being asked about the prosecution process were important, just less scandalous than the conspiracy of a cover-up. Finding out the names on the 'list' may have answered the question of *who* was involved in the purchase of a child for sex, but there were other questions to ask about *how* these crimes can occur. This observation was not lost on academic Natasha Cica who in an essay on social justice in Tasmania included this observation about the case:

Only one of these men has been charged and convicted, Terry Martin, who was the only member of the Tasmanian parliamentary Labor Party who crossed the floor to vote against legislation fast-tracking Gunns' proposed Tamar Valley pulp mill project in 2004. I'm not saying that's why Martin was targeted for prosecution, but I am saying it's all been a very bad look, not helped by the tone of much discussion surrounding the failure by the Director of Public Prosecutions, Tim Ellis, to prosecute any of the other men. Ellis has proffered a legally tenable argument in his own defence, based on the likelihood of successful prosecution...but the debates danced around some deeper issues about power and process in Tasmania - including their relationship to gender. (Cica 2013:16–17)

9.4 Discussion: Losing control

Journalists reporting on this case had a choice: they could accept the explanations given to them by the DPP and Tasmania Police, or they could keep looking for alternative accounts to supply 'reasons that satisfy' (Ettema 2007). In this case, journalists did both. Looking past official statements for other explanations defines journalism - notably investigative journalism. This study sought to understand the tipping point between investigative and sense-making journalism and moral panic. It found that the distinction between 'good journalism' and 'moral panic' was not easily defined. In this case, there was socially useful reporting and there was also reporting that did not serve the public interest. The news values of these stories, and their social value, were contested. The news values of these stories, and their social value, were contested. Could the controversy around this case be described as a moral panic and, if so, where was the tipping point?

To answer the question of whether this was a case of moral panic, let's return to Cohen's (1972:1) oft-cited definition of moral panic. The crimes in Tasmania and their aftermath can certainly be described as an 'episode' that emerged to 'become defined as a threat to societal values and interests'. However, the new representation of the crimes was not 'presented in a stylised and stereotypical fashion' but was instead a mix of online and traditional platforms, genres, frames and conflicting discourses more suggestive of chaos than style. To some extent 'the moral barricades were manned [by] editors...politicians and other right-thinking people', but the contest for definition was manned on both sides by the outraged and right-minded. Finally, while 'socially accredited experts' did identify the problems and propose solutions, there was also a notable shortage of expert opinion in media coverage. In short, some elements of this case fitted the definition of moral panic and its theoretical cohorts of risk, scandal and fear.

Of more interest to this study is what this case revealed about the idea of panics as a catchall to describe news interest in crime. When news coverage becomes

associated with claims of moral panic, opportunities to have genuine deliberation about serious matters can be cut short. The crimes at the centre of this case raised serious and complex questions about whether the Government, the judiciary and legislation, and the Tasmanian community in general were equipped and able to respond to the distressing scenario of a child being commercially exploited for sex. To misread this community outrage and concern as moral panic was to fail to acknowledge the desire to identify not only how to prevent similar crimes occurring, but also how to ensure that police and other authorities respond to them when they occur. News coverage at times contained misinformation and appeared to be strongly influenced by personal and professional agendas, but it would be wrong to assume these distortions indicate panic. The crimes themselves were serious and shockingly callous, but they were also significant in a social and legal sense. The crimes and institutional responses to them revealed failings in practices and processes, such as the ambiguities and lack of clarity in areas of law and the problem of trauma and other harm to witnesses during criminal proceedings, which needed to be addressed. Journalists played a role in this process by seeking comment, clarification and further explanation about many official statements. Communications that undertake to ignore journalists engaged in such hostile reporting risk appearing incompetent or untrustworthy communicators. While individuals and organisations can avoid responding in the short term, and there are good reasons to decline to comment in the immediate after-math of controversial events. In this process, Government critics and advocates for institutional and legal reform found opportunities to put pressure on an increasingly unpopular government. In such communication environments, rumours are floated in a bid to catch truths and half-truths are positioned as fact. These fragments of narratives of distrust, disbelief and disappointment remain on the public record.

This case was always provocative; the crimes were shocking and one suspect was a well-known politician. However, the controversy can be seen to tip into the

kind of reporting associated with moral panic following the DPP's decision. Yes, the DPP did supply journalists with the Memorandum within a week of this announcement, but he appeared to offer little time for those who could not understand its contents or who had other questions. The Memorandum was publicised, but this apparent transparency and accountability is an example of how data and documentation are not necessarily news or information. While those with a close knowledge of the matters at hand, and perhaps with legal training, may have regarded the contents of the Memorandum to be clear, the ongoing confusion about its details suggests that further explanation and contextualisation was important – but not forthcoming.

News discourses around the Memorandum became divided between those who accepted or disagreed with its conclusions. For instance, it did not explain, and nor could it, the aspects of the investigation undertaken by Tasmania Police, that could assure people that police attitudes to men who use prostitutes did not influence their inquiries. The attitudes held by police and other professionals working in child protection in many jurisdictions are now under scrutiny as the gaze on paedophilia shifts to the professional and institutional practices that allow these crimes to avoid prosecution. This study argues that elements of institutional practice in this case, including the attitudes and practices of police and child protection workers that led to a failure to protect the child, were legitimate areas for scrutiny by journalists. Public concern played a key role in driving some of the inquiries that resulted from the crimes against the girl, such as the review of the *Criminal Code* by the Tasmanian Law Reform Institute, which led to significant changes to how sexual crimes against young people are treated in law, the inquiry into child protection and, Mason's independent investigation into the circumstances of the girl. These were initiated, in part at least, in response to public pressure for the Government to respond to the social, legal and institutional factors that contributed the sense that justice was not fully served.

Dismissing public concern and journalistic interest in this case as salacious, interest-driven and misinformed, that is dismissing it as a moral panic, served to amplify some of its features as a panic. This dismissal was in part informed by the hostility between some journalists and some lawyers. Rather than a cooperative communications environment in which news coverage made sense of official explanations, this hostility and lack of cooperation led to contests over definition and legitimacy that became both politicised and personalised. In this case the momentum of the controversy was informed by a re-emerging conservative party who used this case to position themselves against the increasingly discredited Labor Government. Institutional credibility is contested whenever a major social issue gets concerted media attention and, in this case, the Opposition was able to leverage their legitimacy in reporting.

News begins with incomplete knowledge and the need to make sense of events. By the time the Memorandum was released, news coverage had shifted to questions of accountability, largely supported by Government critics. Some journalists had also become distracted by the idea that something was being hidden from public view. Journalists were relying on leaked information to supplement their incomplete knowledge and, in the absence of official explanations that satisfied, journalists looked for alternative explanations. In this case, such conspiratorial thinking crystallised around the idea that there was a 'list'. The 'list' did exist; it was a list of names compiled by police that was both the records of calls made to Devine's telephone during the period that he was advertising the girl for sex and a diary or notebook found in Devine's possession that contained jottings of names and times. As a list of potential suspects, it was of little forensic use as evidence of any wrongdoing and it was certainly not material that could be published. However, the idea of the 'list' became something tangible around which more ambiguous suspicions crystallised. The idea of the 'list' could possibly have been avoided if the media-Government-police-DPP communication nexus was more open. Instead the list was

denied. The distinction between a list of suspects and a list of known perpetrators remained unclear to many. Despite the legitimate reasons for Mason's report and the details of the police investigation not being made public, it appears that the communication strategies around their release did not help journalists make sense of a complex issue. There is a difference between questions aimed at clarification and those aimed at accountability. The former does not imply fault, only elucidation; the latter implies error, and requires explanation and correction. Communications strategies that ignore news media claims of representing the public's interest at time missed the opportunity to use media to explain and inform. In this case, the decision to not pursue further arrests was the tipping point between news that sought explanation and accountability, to coverage that was accusatorial.

Such observations are easy to make in hindsight. During the unfolding of events, where rumour and incomplete information is met with denial and alternative explanations, where different interests compete for definition and visibility, and are particularly complex and the threat of legal censure is ever present, determining what is worthy of pursuing as a story, and what will not survive the tests of verification and sponsor support, is difficult. News coverage contained elements of a moral panic, but this study argues that such labelling does not adequately address the news coverage or the practices of journalists and sources, or the outcomes that followed the debate. In this sense, it supports Gies and Mawby (2009) and Silverman and Wilson (2002) who argue that modern day mediatisation about crimes of child abuse serve as a lightening rod for concerns about the criminal justice system. This study found that a considerable part of the controversy associated with this case was informed by journalists operating within a communications community that treated their profession with disdain and their interest as fleeting. This supports Cohen's (2011) concern that the idea of moral panic has been absorbed into contemporary communication strategies so that representations of public concern and community anxiety are too quickly dismissed by elites who, drawing on Cohen's original

observation of panics, assume that while 'societies may indeed be subject to periods of moral panic ... the condition soon disappears' (Cohen 1972:1). This study has shown that such assumptions not only misread public concern and anxiety, but also contribute to the kinds of communication strategies that, by dismissing media interest, also miss opportunities to engage with public debate and deliberation.

While the previous chapters considered framing and the practices that informed coverage, this chapter sought to define the point at which news coverage of public concern tipped towards outrage and panic. It did this by investigating the communications strategies of the two organisations mostly closely involved in the decision to prosecute and found that the communications strategies that opted for minimal engagement with journalists appeared to have contributed to the confusion and controversy. When journalistic sense-making and accountability work met with official silence the vacuum provided the opportunity for critics of the Government and the DPP to define the debate as controversial and potentially scandalous. Over time, the decision not to press further charges amplified beyond the need for justice to be served on behalf of the victim and became a symbol of anxieties about the institutional responsiveness to child sexual abuse, and more broadly, anxieties about political probity. The analysis then drew on interviews with journalists and their sources to investigate some of the professional practices and logic that informed news reporting. It was found that far from being an easy round for reporters, as Davis (2001) suggested, courts and other legal matters are a 'minefield' for reporters who need to be cautious about reporting in a way that does not prompt legal sanction. The interviews also revealed that reporting on so-called 'folk devils' and social pariahs is not a clearly defined process of blame. Journalists found it difficult to report on someone before the courts in a way that did not trigger sub judice, while others said it was difficult to report sympathetically on person that was widely condemned in the social and professional environment of the newsroom. Martin's status as an elite person not only heightened the publicity around this case, but his

political history in the public arena may have served to ensure there were those in the newsroom who may have allowed that history to dictate how they regarded him as an alleged criminal. Equally, there were others in the newsroom who had sympathy for him due to their personal and professional knowledge of him and this too may have served to protect him at times. Finally, this chapter looked at how journalistic practice was affected by these conditions and whether these opportunities for, and limitations to, reporting contributed to the conspiracy associated with this case. The conspiracy centred around the idea that was a list of people who police alleged had not only bought sex from the girl, but had also known she was underaged. The 'list' came to symbolise the public and journalistic confusion and curiosity about the police investigation, but it also appeared to distract some journalists to see the news values of this case as a political scandal of corruption and impropriety rather than a story that required sense-making and explanatory work to clarify the facts of the matter.

This chapter concludes the three chapters that describe and analyse the findings of this study. The following chapter concludes this study by summarising the key findings, before reflecting on the study in terms of its limitations and suggestions for further research.

10. SOCIALLY USEFUL NEWS ABOUT SERIOUS CRIMES

10.1 Introduction

This study sought to better understand how news coverage of controversial issues can inform public deliberation without tipping into panic by drawing on theoretical approaches to public debate and journalism. This is a universal question for media research, but it is particularly relevant in debates around the rights of children and young people, such as the current coverage of the inquiries into institutional responses to the sexually exploitation of children in Australia and the United Kingdom. While research into news discourses about sexual crimes against children is well documented (for instance Kitzinger 1996; Zelizer 1985), the major changes in media technology and practice, the shift in focus from offenders to institutional accountability, and the global nature of these two aspects signal the need for ongoing inquiry.

Today's media scholarship is undertaken at a time of incredible change in the news landscape and an investigation into how journalists represent public debates about crime is an opportunity to understand how practices are evolving in a changing professional environment. The pressures of change, and responses to pressure, are universal challenges for media research, and this investigation has focused on how journalism can respond to shifting perspectives on the rights of children and young people. This is an important question because the challenges to Tasmanian journalists that this case presented can be seen globally in the recent institutional inquiries into the sexual exploitation of children in Australia, and the United Kingdom. While this study was located in a particular context, it was well positioned to examine and better understand the role of journalism in public

deliberation about crime. It found that socially useful coverage of social problems requires more than improving or changing the practices of journalists. Despite being a local crime story, this case was deserving of scholarly attention because the findings illustrate the role of sources and communications strategies in crime and provide insight into the extent to which communications strategies aimed at controlling media attention, public confusion and blame can actually contribute to these elements in public discourses around crime. Despite criticisms of some of its practices and crisis in many of its business models, journalism continues to play an important part in public life, but the understanding of how media can report on social problems, crime and other sensitive issues in a way that is useful to public deliberation and civil society remains incomplete. As such, this study advances the understanding of how the journalistic practice of source selection and framing can result in news that informs and influences political decision making and outcomes. Such findings have global relevance.

This chapter begins by returning to the three research questions that informed this study to identify the key findings of the research. The discussion then turns to reflect on the limitations and future of the research before concluding with a discussion about the idea and requirements of socially useful journalism.

10.2 Key findings: News, crime and public debate

Q1: What were the features of the news representation of this case?

Journalists construed this crime to be symbolic of a number of ‘problems’ that were already established within Tasmanian and international media discourses, such as the problem of child abuse and neglect, inadequate child protection systems and the scourge of paedophilia. These ‘problems’ were framed in a way that not only identified the factors that contributed to the crimes, but also provided openings for organisations and individuals to step into the public arena to either attribute blame

to other parties or to take responsibility for rectifying the problem (see Chapter 7). This framing process was found to be complex, often competing and usually involving several frames in one story. It was also found to be dependent on source sponsorship, so those frames which attracted comment from sources - either in support of the frame or that were critical of claim-makers - served to perpetuate that frame in subsequent coverage. Perspective and frames that were not sponsored were not as successful.

The 'government problem' frame appeared to dominate the coverage in terms of its frequency and longevity, largely because the Liberals supplied journalists with comments that criticised the Government. Although the analysis found single news stories frequently contained multiple and sometimes conflicting frames, as reporters canvassed various perspectives and sources, the 'government problem' frame persisted and often appeared to lead the news agenda. However, these observations should not allow this process to be misconstrued as a 'media-led' campaign. Instead, journalists, in suggesting a number of perspectives and approaches to the story, found more success in frames that were sponsored and this sponsorship came mostly from political quarters rather than legal or social welfare organisations. This resulted in the increasingly politicised frames as the Opposition, and then later the former Children's Commissioner, used the case to criticise the Government. This ensured that the case not only remained in the news, but it remained as an ongoing political problem.

Framing was not only based around 'problem' frames. News stories were also framed using a particular sense of community and public interest. This type of framing was more indicative of a media-driven perspective. Notions of the public interest featured strongly and appeared to not only serve as justification for continuing coverage, but also legitimised the journalism as part of an important public, rather than commercial or political, activity. News organisations, notably the *Mercury*, were able to re-assert their legitimacy in Tasmania by claiming to represent

the public's frustration with their political and legal elites. This framing of public interest was mutually beneficial for promoting the legitimisation of the newspaper and the Opposition. By justifying reporting as representing public concern and the public interest, the *Mercury* was able to counter criticisms that the newspaper was only interested in the case because of the news and commercial values of stories about sex. Opinion, especially letters-to-the-editor, were used extensively in this process and appeared to play a key role in allowing the *Mercury* to continue to assert itself as the public's arbiter. This also allowed the newspaper to deflect criticisms that coverage was contributing to panic by instead framing these criticisms as a Government avoiding public accountability. The framing of community interest, concern and outrage also served sources who engaged with journalists; to be part of this story was to be seen to be responding to the public's interest rather than one's own interests. The resulting community concern, which included the mediated representation of these concerns, was cited as a factor in legal review and law reform and political decision-making.

It is well established in the literature that news media tends to distort reality about crime and social problems and that the interests and agendas of sources frequently contribute to this distortion (Cohen 1972; Cohen and Young 1981; Goode and Ben-Yehuda 1994; Greer 2010b). This study contributes to these findings by suggesting that the representation of the public interest and social anxiety in news media is always not analogous to panic or irrationality. Instead, the apparent failure of publics to understand media messages and the dominance of so-called misinformation in the news and the confusion expressed in outrage can also be regarded as symptomatic of the less ambiguous malaise of poor communication strategies, which is more readily treated. Greer and McLaughlin (2012b) developed their idea of 'politics of outrage' and 'scandal amplification' by arguing that such coverage occurs when news agencies compete to scoop their market rivals to bigger and better scandals. However, in this instance, it appears that the features of news

representation were the result of journalistic work seeking explanation and accountability. As Eldridge and Reilly (2003:149) identified, during a controversy, attempts by official sources to try to keep tight control on information can lead to secrecy and conspiracy becoming key major news themes. Their research argued that the vacuum is filled by non-elite actors, and this study adds to that finding by suggesting that tight controls of official information can also create a vacuum that is filled by elites, namely Opposition parties and other political actors.

Q2: How did journalistic practice, the communications strategies of actors, and media laws contribute to news representation of this matter?

The process of framing news in this case was a composite of both journalistic and source practice that informed how events were understood in terms of their news values. The interviews with journalists and their sources revealed the extent to which the idea of news values is fluid and the extent to which contest, visibility and mobilisation of sources informs perceptions of news values and eventual news content.

The definition of news values was a notable feature in this case because coverage was at times criticised for how it treated a sensitive matter and implicit in these criticisms was the notion that news interest was not based on 'good' news values, such as public interest, but instead on 'bad' news values, such as sex. Some journalists did not continue reporting the matter, and were critical of their colleagues for pursuing the story. Others continued to report despite criticisms that it was not a story worth pursuing. The perceptions of the news values associated with this case were fluid, frequently contested and often diametrically opposed, and this complexity challenges the apparent simplicity of more recent taxonomies of the 'news values' (eg. Ricketson 2004).

The idea of there being news values was found to be not specific to newsroom practice. Instead, the idea of news values was found to influence how sources both interpret news interest and identified opportunities to seek, or avoid, news access.

Criticisms that news representation of crime and social problems is distorted raise questions about the conditions that contribute to this distortion. Decades of research have pointed to the importance of considering how sources, and especially those in elite and powerful positions, inform and influence news content. However, the contemporary news landscape is marked by progressively resource-poor newsrooms that are increasingly dependent on content provided by sources. The absence of journalists with the skills, time and the resources to adequately investigate some of the claims raised in this case was found to contribute to news content that appeared, at times, inaccurate or inconclusive. Poorly resourced journalists and established professional practices contributed to Tasmanian journalists focusing on the low-hanging fruit of individual challenges and ad hominem attacks, but they were also working in a difficult communications environment. For instance, the laws that control what can be reported in news media, such as the provisions around contempt, sub judice, court suppression orders and defamation made reporting on this story challenging for journalists. These laws have been put in place over time to protect witnesses, plaintiffs and defendants from the harms associated with publicity of criminal proceedings. However, this study includes the limitations of this legal framework in its analysis of journalistic practice to emphasise that even a free and fearless press has certain restrictions that prevent ideal outcomes. These restrictions were found to inhibit journalists as they sought to produce stories relating to this case. Notwithstanding these limitations, the communications environment of the courts and the justice system more generally, also contributed to news content.

There is a significant body of international research into the role of public relations and communication by the police and courts, but less research into how

courts have developed and managed their media, information, and communication operations in Australia (Mawby 2010a; 2010b; Surette and Gardiner-Bess 2014). This study contributes to this growing field of inquiry, by finding that the communications strategies of police, the DPP and the courts influenced not only how news covered these events, but also the impact on public perceptions of crime. It found that poor communications strategies contributed to the kind of inaccuracies and other problems in reporting that was is maligned by many in the legal profession. The reluctance or disinclination to engage with journalists shown by legal practitioners, and the court system more generally, was also found to contribute to the politicisation of legal issues because political interests stepped in to comment. The result led to a politicisation of news discourses around a criminal matter, which contributed to some of the populist responses to law and law reform that appear to be a feature of the contemporary political landscape. Indeed, it suggests that more active engagement with, rather than disengagement from, journalists from those in institutions outside of government might be an antidote to this increasing politicisation and populism of news discourse around crime and other social problems.

The politicisation of this case can be regarded as conforming to Greer and McLaughlin's (2011) definition of 'politics of outrage' and 'media trials', whereby news media appears to be leading efforts to set the political agenda. This study contributes to their findings by arguing that these campaigns are not necessarily 'media-led' but rather evidence of the extent to which the network of news, party politics and institutional politics can contribute to news media that is hostile to incumbent Governments and other public figures. This study found that journalists were working in an environment in which established hostilities between news media and the justice system were amplified by the politicisation of events. The result was that much of the sense-making work undertaken by journalists – namely, attempting to translate the complex legal issues in the DPP's decision – was

undertaken in an uncooperative communications environment. Communication strategies that return the hostility, such as by blocking and denying media questions and resorting to ad hominem attacks and petty personal agendas, can assist in amplifying, rather than controlling, the controversy. The politicisation of crime is often regarded as a negative consequence of media reporting of criminal matters and social problems (Chancer and McLaughlin 2007; Greer and McLaughlin). However, the increasingly hostile and uncooperative relationship between journalists and those in the legal community was observed to contrast with the willingness of Government critics to talk with journalists and use their interest to advance their own visibility in debates. As such, this case increasingly became politicised, especially with the focus on Thorp as a failing minister. However, politicisation is not entirely cynical: politics is central to liberal democratic processes and is therefore arguably a desirable place for debates about social problems to occur. As such, the politicisation of this case can also be regarded as an important precursor to the public and expert deliberation that led to amendments to the *Criminal Code* that clarified the laws around sexual activity and young people. As noted earlier, not all of the amendments were publically canvassed, but it could be argued that the Government exercised considered leadership in repealing the sections of the *Criminal Code* relating to homosexuality and not allowing such a measure to become publically and politically contentious.

Contemporary media research remains curious about the extent to which journalist-source relationships inform not only news content, but also public deliberation. These findings contribute to this research by emphasising that communications strategies that do not take into account the practices of journalistic sense-making and accountability work run the risk of amplifying, rather than mitigating public concern. To borrow from Gans' (1980:116) oft-quoted analogy of the dance: journalists sometimes attempt to take the lead because of genuine curiosity and a desire to make sense of confusion, rather than to pursue an agenda.

Actors and organisations that dismiss this line of questioning not only miss an opportunity to explain, clarify and inform, but also risk appearing dismissive of the public or even avoiding transparency and accountability. A reluctance to dance with an inquiring journalist may indeed provide the space for a challenger to enter the dance.

Q3: Can this case be described as a moral panic and, if so, at what point did coverage tip towards panic?

This study investigated news coverage in terms of framing and the professional practices of journalists and their sources that informed this content. As discussed so far, these questions are interesting in themselves, particularly in relation to how public knowledge and opinion is informed and represented by news. However, the question remained as to whether it could be said that this case was a moral panic. Any distinction between informative and inflammatory news is a subjective interpretation; in the struggle for meaning and definition, of visibility and legitimacy, the gains of some are the losses of others. However, some determination of the point in which news shifts from being informative to causing panic is still useful. The third and final question of this study then asked if this was a case of panic and, if so, at what point did news coverage become a panic and what influenced this transition?

Research into what constitutes a moral panic has possibly been exhausted (Cottle 2006b; Goode 2000; Ungar 2001). While panic as a genre has identifiable taxonomies, less understood is how panics can promote lasting social change (Cohen 2011; Critcher 2009; Goode and Ben-Yehuda 1994; Killias 2006; Lull and Hinerman 1997; Lumby and Funnell 2011), or how they can be avoided altogether (Cavanagh 2007; McNair 2006). It is incumbent on researchers to attempt to investigate what practices lead to panics and outrage (Greer 2010b; McNair 2006). However, this study also found that pejoratives of media-driven scandal, witch-hunts or moral

panic, overshadow news discourses that result from the struggle for visibility. For this reason, this study drew on Djerf-Pierre et al. (2013) approach to the scrutinising work of journalists as 'accountability work' and McNair's (2013) description of journalistic work as 'sense-making', as useful approaches in which to appraise how Tasmania journalists engaged in coverage that both appeared to contain elements of moral panic, but also showed signs of efforts to explain a complex legal matter and seek redress for serious crimes against a child. In this sense, while the news around this case was most certainly scandalous in nature, the scandal was not exclusively focused on around the sexual nature of the crimes. Instead, the scandal was a political: amplified by the personalization of the individuals associated with their roles in a difficult and contentious series of decisions and also because this process of personalization led to them being lightning rods of public concern about integrity.

The findings of this study indicate responsibility for a panic forming in news within three sectors: political and state institutional actors, news organisations, and non-political actors. Political and state institutional actors, and to a lesser extent non-political actors, contributed to the panic in four ways:

- 1) Communications strategies by official agencies that dismiss community concern as moral panic are likely to contribute to, rather than mitigate, public outrage because assumptions that the public is inclined towards panic can overlook genuine confusion, even if informed by misinformation, that requires further elucidation;

- 2) Such crises in communication risk missing an opportunity to maintain primary definition and social legitimacy and instead promote confusion and distrust;

- 3) When media interest is met by official silence, journalists will seek alternative voices that include putting forward perspectives, such as 'conspiracy

theories', which implicate government and state agencies in allegations of dishonesty and secrecy;

4) These moments of crises also provide significant opportunities for political opponents and critics to label a Government as lacking in transparency and accountability.

In short, communications strategies that dismiss public concern and confusion as based on misinformation and media-driven politicisation, and therefore locate it in terms of moral panic, risk contributing rather than mitigating the panic. However, it would be naïve to think that journalism does not also contribute to the problem of panics. In this case, it would be less useful to consider the voyeurism associated with news coverage of sexual crimes as causing the anxiety or panic. Instead, it was the shift to concern about lack of visibility and collusion between the Government and the judiciary and the sustained emphasis on the Government as failing to ensure justice was served that triggered anxiety. This is not to say that the crimes and the official response to them should not have been politicised. It is entirely fitting that social problems enter the political field because it is a legitimate site for democratic deliberation. The challenge for journalists is not to allow the personal and symbolic contests within these struggles to distract from the issues at hand. It was important to address the systemic, legal and social problems that the crimes against the child exposed. News coverage became less socially useful when it became mired in the search for a 'list' and later, a contest between two people's political careers. The dilemma of a chaotic media environment was identified by McNair (2006) as a causal agent in the increasing incidents of panics in news media. This study has investigated this observation in relation to the events in Tasmania and found that news flows were not only at times chaotic, but also occurred at a time when Tasmanian news discourses had established notable cynicism towards the incumbent government. As such, the communication environment was already hostile in matters relating to accountability when this story broke.

This study sought to understand how news media can better inform public deliberation about socio-legal events. It found in the literature that when moral panics and other mediatised distortions occur, news media often stands alone in critics' sights and the complex communications environment of claim and counterclaim and political and personal opportunism appear often overlooked. cursory acknowledgments about time and meddlesome sub-editors are made before reporters are accused of inaccuracies and worse. Recent media scholarship has removed news media from the silo of autonomous action implicit in these criticisms, to consider how news journalism is one of several social actions in the fragile matrix of democratic society – neither singular, nor all-encompassing – but important (Cottle 2004; Dahlgren 2005; Schlesinger et al. 1991; Schlesinger and Tumber 1994). The idea of moral panic, and other distortions in the media landscape, needs to be understood within this context, too. This study, through a theoretical lens of publics and the public sphere, identified that the practice and strategies of journalists, their sources and other actors played a major role in the trajectory of news as a form of public deliberation tipping into news as scandal and controversy.

10.3 Reflections on research: Limits and future opportunities

10.3.1 *Researching in real-time*

There were advantages and disadvantages in undertaking a study in which most of the data was collected as it occurred. This study began in November 2010, just a few weeks after the DPP's controversial decision was made public. As mentioned in Chapter One, my professional association with Terry Martin and the degree of publicity around this case alerted me to this coverage from the day the story began with Martin's arrest in October 2009. Researchers and journalists need to always be aware of the importance of their own objectivity, but this is particularly true for those who are acquainted or even close to the people that are subjects of their

research. While care should be exercised, there are also benefits in responding to the events in the communities in which we live, rather than seeking fields where objectivity is perhaps more easily maintained.

The benefits of doing a study in real-time meant I was able to observe the response to events on those around me as well as being able to interview people while recollections were relatively fresh and documentation was still readily available. The disadvantage of such timeliness was that the ongoing legal matters and the controversy attached to this case appeared to stop some individuals wanting to participate in this research.

Real-time investigating also left research susceptible to delay. For instance, Martin's trial was almost two years to the day from when he was arrested which delayed data collection and also presented an unknown quantity to the direction of research until early 2012. Similarly, anticipating the outcome of the review into the defence of mistake as to age, and the subsequent amendments to the *Criminal Code* in September 2013, also meant the investigative path that this research needed to take was not always clear. These factors contributed to a sense of working with incomplete knowledge, but I would argue that this sense of anticipation, confusion and second-guessing enabled me to appreciate the factors that informed the decision-making of both journalists and actors whose professional logics and practices I was investigating. This ambiguity and anticipation informed my interest in how this case spiraled into a controversy about transparency and accountability.

10.3.2 *Impact of this case on the victim*

This project does not discuss the impact of news reporting on the victim who was 12-years old at the time of the crimes. There were a number of reasons for this, including the difficulties of discussing a legal matter while there are ongoing proceedings and the ethical problem of discussing a recent traumatic event with a victim, especially one who is a child. The girl in question is reportedly preparing a

legal case to sue the State of Tasmania for damages (McKay, 10.11.2011). The legal and ethical restrictions on discussing the impact of media representation of this crime on the child in question may lift when her case against the Government is complete. By then she will be a young adult, who has had time to reflect on her experience and may be more willing to speak about her experience of being at the centre of a high-profile media story in a relatively small community. It would be interesting to revisit this case if the child in question, who turns 18 in 2015, does sue the state for failing to protect her.

10.3.3 *Impact of this case on institutional practice and policy*

This investigation has put a critical eye to the communication strategies of key judicial institutions and found that these strategies informed some of controversy associated with this case. As such, this case draws attention to the importance of relations between these institutions and journalists to be conducted in a way that does not perpetuate some of the media injustices associated with crime reporting. As Greer and McLaughlin (2012b:19) note, while the news media have long been associated as a location where open justice can be seen to be done, changing journalistic practices, norms and platforms are '(re)defining *what criminal justice is*, and how it can and should be realized'. In this case, local media not only administered its own punishment on the perpetrators associated with the crimes, but also applied pressure to political deliberation and decision-making in relation to legislative changes. As such, this case study looks beyond ideas of trial by media, such as discussed by Greer and McLaughlin (2012b), to consider how such mediated debates about crime can inform legal reform for better or worse.

The scope of this investigation did not extend far into the practices and decision-making of those involved in child protection work in Tasmania, including those with Child Protection and Tasmania Police. As discussed in Chapter Three, there is a degree of research on this topic in Australia (Goddard 1996; Goddard et al.

1993, 1995; Goddard and Liddell 1993; Goddard and Saunders 2001; Mendes 2000, 2001). There is little research into child sexual exploitation in Australia, and this project contributes to the literature by debunking some of the assumptions about the role of news in public debate and moral panic by providing a more nuanced explanation of the processes that influence coverage. Such an explanation is hopefully an invitation to those involved in child protection, both in the field and in academe, to engage more proactively with journalists when stories of child exploitation are in the news. The relative silence from these groups during this case suggests that there is work to be done in breaking down some of the assumptions about the news values journalists hold in relation to child sexual abuse. A greater dialogue between journalists and child protection researchers and practitioners may also address some of the deficiencies in news discourses that still refer to child prostitution and child pornography to describe crimes of abuse

10.3.4 *Reflections on Terry Martin*

Terry Martin came to symbolise the ambiguous and conflicted man who is the 'client' of prostitution: the person who on the one hand engages in a legal transaction, but who also risks perpetrating harm. In the end, Martin was found guilty of having sex with someone whom he should have been able to identify as being less than 17. Perhaps not 12, but neither adult enough to be selling sex. From the time of his arrest, Martin was silent, not only in news coverage, but in court he also said very little. His treatment in news coverage perhaps epitomises the problems for journalists when presented by the silence that results from legal restrictions on the publishing of information and communication strategies that enlist silence over explanation. However, while Martin was silent, his arrest and subsequent conviction also raised important question, such as, the legal rights and responsibilities of people who buy sex in an industry that promotes youth; the idea of age in terms of 'barely legal' as an ideal; and the difficulty of determining guilt

when crimes are committed by people who are affected by neurological illness. These questions warrant further investigation. Perhaps Martin's personal story was not the important story for journalists to cover as much as these more complex questions. Despite knowing Martin professionally for a number of months in the lead up to his arrest, he is not a central figure in this study, even though he came to be symbolic in media. Nevertheless his treatment by journalists raises questions of the treatment of people accused of crimes against children in the media, which continues to be an important ethical question for journalism that warrants further study.

10.3.5 *Contribution to journalism research*

News journalism in liberal democracies plays an important part in informing and reflecting the opinions of the public, including informing people of the actions of those employed to govern, as well as providing a forum in which people can participate in the process of political decision-making (Lewis et al. 1998; Schultz 1998; Schudson 2006). Like other industries and organisations, journalism variously fails and succeeds at this role. This investigation sought to understand how journalists can report on a criminal matter in a way that is socially useful by communicating the complex social and legal conditions that led to the crimes, as well as the conditions contributed to its journey through the justice system. It identified moments in reporting that contributed to public debate and deliberation that did not become mired in panic and the distortions of exaggeration or politicization and it sought to understand how these influences contributed to these features arising in the news.

This study contributes to the field of media criminology by examining the practices of journalists and their sources during a heated debate over the transparency of policing and judicial processes, legislation and political decision-making. It used an extraordinary case to identify key moments in discourse and to

identify the key actors that contributed to the trajectory of the story through the news.

Although the crimes occurred in a regional city in Australia, the findings have a wider relevance to research. Living in a small community with limited media organisations allowed the research to clearly identify the media organisations and specific journalists, as well as the specific actors in the institutions in question, in a way that may have been more confabulated in a larger jurisdiction in key roles involved in a complex debate that reached into parliament, the judiciary and the media itself presented an ideal opportunity to isolate the practices that contribute to news coverage for examination. A similar undertaking in a bigger community with more media organisations and actors outside the newsroom may have presented a difficult set of parameters. That said, Greer and McLaughlin (2012b) developed their idea of 'politics of outrage' and 'scandal amplification' in a larger setting. This work contributes to this line of research by not arguing that the amplification occurred because news agencies were competing to scoop their market rivals by finding bigger and better scandals, but instead, that the journalistic work for explanation and accountability created a space for comment that was not filled by official sources but rather government critics. While this study concurs with Greer and McLaughlin (2012b: 289) that the process of naming and shaming and 'trial by media' may follow regardless of official responses, this study contributes to this observation by saying that it is not solely journalistic practice that steers this trajectory. Similarly, while it has been observed that scandals in the news may be a contributing to the erosion of confidence in institutional authority (Cappella and Jamieson 1996; Castells 2009; Greer and McLaughlin 2012b), this study has contributes to a line of inquiry (Gies and Mawby 2009) that asks how communications strategies of officials can also improve public confidence in institutions.

Although these aspects of civic and political life are varied in different jurisdictions, there are also commonalities in the relationship that journalism has to

institutions in democracies that, for instance, operate under Common Law, such as Britain. For this reason, this study has reflected on a number of these examples to draw attention to how media reporting can play an important role in not only initiating police inquiries and criminal proceedings, but also ensuring that victims come forth to contribute to them. The role journalists at *The Times* played in demanding a stronger response from police in relation to the grooming of girls for sex in Rochdale (Rochdale SCB 2012) and Rotherham (Jay 2013) was discussed in this sense, as was the sympathetic representation of victims in media contributed to more victims coming out with complaints about those named in Operation Yewtree (Gray and Watt 2013) and in Ireland's inquiry into the Catholic Church that was regarded as 'generally well done', 'absolutely necessary' and without which 'the impact of institutional and sexual abuse of children would never have received the public attention that, in truth and justice, it merited' (Auge et al. 2010:67).

This study has contributed to journalism research by indicating the importance of strategic communications between journalists and the judiciary. There are good reasons for the law, especially the prosecutorial processes, to appear at arm's length from government and public opinion, however this distance should not preclude deliberate media communications strategies. This finding prompts the question of whether changing platforms, such as social media, is changing this observed proclivity of journalists to privilege their political sources in reporting.

10.4 Conclusion: Good journalism needs more than good journalists

This case of child sexual exploitation in Tasmania is an example of how an age-old problem continues to appear in the confluence of child neglect and predatory opportunism. The difference for children caught in this cycle of abuse and exploitation today is that society, and its institutions in particular, are less likely to ignore these crimes or to assume the victims are somehow to blame. Part of the shift in institutional responses to child sexual exploitation must come, and in the cases discussed here has been shown to come, from journalists and news organisations too. As with all reporting of crime, journalists have the responsibility to ensure that reporting serves the dignity of victims and the public good, but as the examples in the United Kingdom showed, journalists are also well-placed to apply pressure on the criminal justice system, which includes policing and the courts, to ensure that legislation and judicial procedures not only serve the interests of victims but also reflect societies' expectations of justice. Journalistic representation of these crimes not only contributes to shaping community understanding of the problem of child sexual exploitation, but it also has the capacity to encourage other victims and witnesses to come forward. These are all strong justifications for ensuring that journalists continue to develop practices and professional norms, such as source selection and news values, that are cognisant of the power news has in shaping and informing public understanding and political action about social problems as real and serious as child sexual exploitation.

Newsmaking and public deliberation is a complex and contradictory process undertaken in real-time, using limited and incomplete knowledge, and fraught by competing claims and struggles for legitimacy and visibility. The complexity and contradiction of these elements in journalism, and public life generally, is a given; that journalism distorts public understanding of crime and contributes to panic and fear, is not. This case presented journalists with myriad opportunities to report, but

this study has shown that what they could report was also limited by their own personal and professional ideologies, by the organisations they worked for, by the perceived and real limitations presented by legal and ethical controls and by what sources were willing to tell them and be quoted on. Importantly, while some journalists saw in this crime the opportunity to raise serious and difficult questions about child sexual exploitation in Tasmania, there was significant pressure coming from many quarters to not pursue this story. To dismiss this controversy as a case of a media-led panic would be to dismiss genuine community concern that Tasmania's legislation, policy and institutional practice did not sufficiently address the problem of child sexual exploitation. Such criticism ignores a long history of journalists seeing in traumatic and tragic events opportunities to shine a light into areas of life that are ignored or hidden from public knowledge. This line of criticism too easily dismisses journalistic inquiry as scare-mongering or driven by professional and commercial efforts to catch the next big story and risks overlooking the role journalism plays in uncovering and interrogating weakness in the fabric of civil society. Importantly, this case study has shown that such disdain for media within civil institutions can foster the poor reporting that it criticises. If journalism is part of a wider communication structure (Castells 2009), then this study found a structure at times weakened by general cynicism towards the interest shown by journalists and the public more generally in crime. This cynicism resulted in communication strategies that used media as a bargaining tool in closed forums and sought to control public interest in the crime rather than address questions. These strategies resulted in news coverage that was often personalised and hostile; obfuscating rather than explanatory, and reporting that resulted in rumour and conspiracy, especially when personal agendas and political interests were able to find purchase.

This study analysed the crimes against a child to explore wider questions of the place of journalism in the public sphere. It found that the responsibility for making news that makes sense of the complex conditions that contribute to crimes against

children does not singularly rest with journalists. Socially useful reporting of crimes involving children and young people, which does not tip into panic, needs more than good journalism: it requires good relationships and meaningful communication between journalists and those working in the various institutional fields of civic life.

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APPENDICES

Appendix 1: News stories

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Appendix 2: Legal Cases

Tasmania v Terence Lewis Martin (No 521 of 2009)

Tasmania v Terence Lewis Martin, CoPS, Porter J, 29 November 2011.

Tasmania v Terence Lewis Martin (No 2) (No 36 of 2011)

Tasmania v Terence Lewis Martin, CoPS, Blow J, 16 February 2012.

Tasmania v Andrea Martine Haley (No 86 of 2012)

Tasmania v Andrew Holman (No 75 of 2012)

Tasmania v DEL, CoPS, Evans J, 14 May 2010.

Tasmania v Gary John Devine, CoPS, Evans J, 25 March 2010.

Appendix 3: Legislation

Criminal Code Act 1924 (Tas). [Consolidated at 14 May 1997]. Accessed 15 September 2014 from: <http://www.thelaw.tas.gov.au>

Criminal Code Act 1924 (Tas). [Consolidated at 8 October 2013]. Accessed 15 September 2014 from: <http://www.thelaw.tas.gov.au>

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Evidence (Children and Special Witnesses) Amendment Act 2013. Accessed 12 September 2014 from: Accessed 15 September 2014 from: <http://www.thelaw.tas.gov.au>

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Sex Industry Offences Act 2005. Accessed 12 September 2014 from: <http://www.thelaw.tas.gov.au>

Appendix 4: Key Dates

2009

<i>Aug-Sept</i>	Girl advertised and working as an 18-year-old prostitute
<i>Oct</i>	Terry Martin arrested and charged
<i>Nov</i>	Gary Devine arrested and charged

2010

<i>Feb</i>	Girl's mother arrested
<i>March</i>	Devine sentenced
<i>May</i>	Girl's mother sentenced
	Children's Commissioner begins independent inquiry
	Lin Thorp becomes Children's Minister
<i>Aug</i>	Applications for Children's Commissioner advertised (Mason's three year contract to expire in October).
<i>Sept</i>	DPP announces there will be no further arrests
<i>Oct</i>	Government releases its response to Mason's (2010) report.
	Paul Mason replaced as Children's Commissioner by Aileen Ashford
	Parliamentary Committee Inquiry into the Child Protection Service commences

2011

<i>Feb</i>	Lara Giddings becomes Premier after David Bartlett resigns
	Mason stands for seat of Rumney against Lin Thorp
<i>May</i>	Thorp loses her seat in Legislative Council Elections
<i>Nov</i>	Martin's first trial – found guilty and given a suspended sentence

2012

<i>Feb</i>	Terry Martin pleads guilty to charges of child pornography and is given a suspended sentence
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2013

<i>Sept</i>	<i>Criminal Code</i> amended to include a 'no age' defence of 13 years
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Appendix 5: Key political actors

Political

David Bartlett	Labor Premier (2008–2011)
Lara Giddings	Labor Premier (2011–2014) Tasmanian Attorney General (2008–2011)
Paul Lennon	Labor Premier (2004 –2008)
Terry Martin	Member for Elwick (2004–2010)
Lin Thorp	Member for Rumney (1999–2011) Minister for Children (2010-2011)
Brian Wightman	Tasmanian Attorney General (2011–2014)

Statutory Appointments

Aileen Ashford	Tasmanian Children’s Commissioner 2010-2013
Tim Ellis	Director of Public Prosecutions (since 1999)
Paul Mason	Tasmanian Children’s Commissioner (2007–2010)

Non-Government Organisations

Liz Little	Sexual Assault Support Services, CEO
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Appendix 6: Interviewees

Director of Public Prosecutions, Tim Ellis (23 October 2012),

Tasmania Police Association president Randolph Wierenga (9 October 2012),

Tasmania Police communications officer Jodi De Cesare (21 February 2013),

Ten de-identified Tasmanian journalists (September 2012 - March 2015),

Six de-identified Tasmanian public servants or advocates employed in the non-government sector (September 2012 - March 2015).